

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





# 75-141083

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

B  
P/S

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ISADORE MARION,

Defendant-Appellant.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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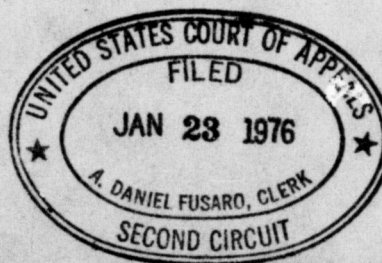
APPENDIX OF APPELLANT

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4

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## TABLE OF CONTENTS

	<u>Page</u>
Docket entries of the United States District Court for the Southern District of New York in United States v. Marion, 74 Crim. 821 . . . . .	1a
Copy of Indictment, United States v. Marion . . . . .	4a
Copy of Motion for Discovery of Illegal Electronic Interceptions. . . . .	23a
Copy of Motion to Dismiss. . . . .	26a
Copy of Motion for Relief from Prejudicial Joinder . . . .	29a
Copy of Affidavit in Opposition to Defendant's Pre-trial Motions. . . . .	30a
Copy of Government's Memorandum of Law in Opposition to Defendant's Pre-Trial Motions. . . . .	35a
Copy of Transcript of Record of Proceedings dated November 1, 1974 . . . . .	42a
Copy of Motion to Suppress Testimony And to Dismiss. . . .	66a
Copy of Motion to Dismiss. . . . .	81a
Copy of Motion for Bill of Particulars and Discovery . . .	83a
Copy of Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss and Motion for Bill of Particulars and Discovery . . . . .	86a
Copy of Memo Endorsed on Motion for Relief from Prejudicial Joinder and attached Orders Denying Other of Defendant's Pre-Trial Motions. . . . .	88a
Copy of Memorandum dated April 22, 1975. . . . .	91a
Copy of Judgment . . . . .	95a
Copy of Conditions of Probation. . . . .	96a
Copy of Notice of Appeal . . . . .	97a
Copy of Transcript of Trial of September 24, 25, and 26, 1975 (Designated Portions) . . . . .	97a(1)

74 CRIE. 321

**CRIMINAL DOCKET**

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Carl Bornstein AUSA
ISADORE MARION	264-1135
	For Defendant:

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
(12)					
Fine,					
Clerk, 5.53					
Marshal,					
Attorney,					
Commissioner's Court, 18:					
Witnesses, 1623:1503					
Perjury. (1 ct.)					
Obstruction of Justice. (cts. 2.43					
(Three Counts)					

15-14

DATE	PROCEEDINGS
8-22-74	Filed Indictment.
9-3-74	Adjourned to 9-4-74.
9-4-74	Deft. appears (Atty. Present) pleads not guilty. Motions to be submitted by Oct. 15, 1974. Bail fixed by court at \$25,000 Personal recognizance bond. Bail limits to extend the Continental U.S. Conner, J. Case assigned to Conner, J.
9-4-74	Filed P.R.B. in amt. of \$25,000.



(.2.)

Conner, J.

PROCEEDINGS	CLERK'S FEES	
	PLAINTIFF	DEFENDANT
10-17-74 Filed notice of motion to produce informants...memorandum attached.		
10-17-74 Filed motion for discovery...memorandum attached.		
10-17-74 Filed motion for records of Grand Jury Vote ....memorandum attached.		
10-17-74 Filed motion for discovery and inspection...memorandum attached.		
10-17-74 Filed motion to dismiss....		
10-17-74 Filed motion for relief from prejudicial joinder.		
10-17-74 Filed motion to supplement motions upon receipt of material.		
10-17-74 Filed certificate of mailing of above motions.		
10-30-74 Filed affdvt. in opposition to deft's pre-trial motions.		
11-8-74 Filed Govt's memorandum of law in opposition to pre-trial motions..		
1-8-75 Filed transcript of record of proceedings, dated 11-1-74		
1-9-75 Filed motion to suppress Grand Jury testimony and to dismiss cts. 2 & 3...		
1-13-75 Filed deft's motion to dismiss		
1-13-75 Filed memorandum in support of bill of particulars and discovery.		
1-20-75 Filed motion for continuance of trial date.		
4-22-75 Filed memo endorsed on motion to dismiss.../filed 10-17-75 Deft's argument that the contents of the intercepted conversations were presented to the G.J. in vio. of 18:2517(5) is totally without foundation..Deft's motion to dismiss ct. 2 is denied...Conner, J.		
4-22-75 Filed memo endorsed on filed 10-17-75 for relief from joinder.../motion Motion Denied...Conner		
4-22-75 Filed memo endorsed on motion filed 10-17-75 for production of records of Grand Jury vote..Deft has presented no evidence which would support a conclusion that there was any irregularity****Conner, J...		

2a

B

## PROCEEDINGS

- 4-22-75 Filed memorandum opinion #42282 Presently before the Court are motions by deft to dismiss cts. 2 and 3\*\*\*There can be no doubt that a prosecution for obstructing justice is permissible\*\*\*This Court therefore sees no reason to go beyond Judge Frankel's findings....Conner, J...
- 4-28-75 Filed waiver of right to speedy trial..
- 7-18-75 Filed deft's affdvt. of Oscar B. Goodman, atty-at-law, representing deft... concerning the continuance of the trial.
- 7-3-75 Filed memo decision & order #42733 Deft has moved this Court to dismiss the indictment\*\*\*the letter designating Mr. Aronwald as special atty. is clearly sufficient\*\*\*The motion is therefore denied....Conner, J....n/n
- 9-22-75 Deft & atty present...Minimization hearing begun..
- 9-23-75 Minimization hearing cont'd. & adj'd sine die.
- 9-23-75 Deft. & Atty. present...JURY TRIAL BEGUN....Conner, J.
- 9-24-75 Trial Cont'd.
- 9-25-75 Trial Cont'd.
- 9-26-75 Trial Cont'd. & Concluded...Deft GUILTY Cts. 1, 2 and 3. Bail fixed at \$50,000 P.R. unsecured to be posted 9-26-75...Bail limits to extend the continental U.S.A. P.S..I.. ordered Sent. 11-14-75 9:30 a.m....Conner, J....
- 9-26-75 Filed personal recognizance bond ~~at~~ unsecured in sum of \$50,000...
- 11-20-75 Filed Judgment (Atty. Oscar B. Goodman, present) Imposition of sentence is suspended. Defendant is placed on probation for a period of THREE (3) YEARS on each of counts 1, 2 and 3 to run concurrently with each other, but consecutively to the period of FIVE (5) YEARS probation that defendant is now serving, subject to the standing probation order of this court. That defendant have no association with any person who is known or widely reputed to be involved in criminal activity. CONNER, J  
Entered on 11-21-75.
- 12-01-75 Filed Notice of Appeal from Judgment Dated 11-20-75. Copy mailed to Deft Isadore Marion c/o Elliot Taikeff, Esq. 335 Broadway, New York, N.Y. Copy given to U.S. Atty.
- 12-19-75 Filed transcript of record of proceedings dtd: Sept. 22 and 23-75
- 12-19-75 Filed transcript of record of proceedings dtd: Sept. 24, 25 and 26-



UNITED STATES OF AMERICA  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

INDICTMENT

- v -  
ISADORE MARION,

Defendant  
-----;

COUNT ONE

The Grand Jury charges:

1. On or about December 20, 1973, and on or about January 8, 1974 in the Southern District of New York, ISADORE MARION, the defendant, having duly taken an oath that he would testify truthfully before a grand jury of the United States, duly empanelled and sworn in the United States District Court for the Southern District of New York, and inquiring for that District into violations of federal law, unlawfully, wilfully and knowingly and contrary to said oath did make false material declarations as herein set forth.
2. At the time and place aforesaid, the said grand jury was conducting an investigation into possible violations of United States laws prohibiting conspiracy to transport a firearm in interstate commerce (Title 18, United States Code, Sections 371 and 922) and other federal statutes.
3. It was material to the investigation described in Paragraph 2 hereof that the Grand Jury ascertain (a) whether the defendant ISADORE MARION was involved in arranging, with one Jack DiNero, a transaction involving the transportation of an unregistered firearm from Syracuse, New York to Las Vegas, Nevada; (b) the nature of this transaction including the identities of other persons involved; and (c) whether the unregistered firearm was to be used in the commission of any criminal act.
4. On or about December 20, 1973, the defendant, ISADORE MARION, appearing as a witness under oath before said Grand Jury did testify with



respect to the aforesaid material matters as follows:

Q. What did you want the unregistered gun for?

A. Just to have another pistol around the house.

\* \* \*

5. On or about January 8, 1974, the defendant, ISADORE MARION, appearing as a witness under oath before said Grand Jury did testify with respect to the aforesaid material matters as follows:

Q. What were you going to do with this unregistered gun?

A. Well, in Vegas you can sell an unregistered gun for a lot of money.

Q. To who?

A. To anybody. There is a big market in Vegas for unregistered guns.

\* \* \*

Q. Your testimony is that you wanted this gun so that you could sell it?

A. Yes, sir.

Q. You are clear on that?

A. Yes, sir.

Q. There is no doubt in your mind about that?

A. No doubt.

Q. You weren't going to keep it for yourself?

A. No, sir.

Q. You weren't going to use it for yourself?

A. No, sir.

6. The aforesaid declarations made knowingly by the defendant, ISADORE MARION, as set forth in Paragraphs 4 and 5, hereof, are inconsistent to the degree that one of them is necessarily false.

(Title 18, United States Code, Section 1623)

COUNT TWO

The Grand Jury further charges:

1. On or about December 20, 1973 and on or about January 8, 1974, in the Southern District of New York, ISADORE MARION, the defendant, did unlawfully, wilfully, knowingly and corruptly obstruct and impede and endeavor to obstruct and impede the due administration of justice in the manner hereinafter described.

2. On or about December 20, 1973 and on or about January 8, 1974 the defendant, ISADORE MARION, who had previously received a grant of immunity pursuant to Title 18, United States Code, Section 6002, appeared as a witness before a Grand Jury in the Southern District of New York, which was then and there inquiring into violations of federal law.

3. Between on or about December 20, 1973 and on or about January 8, 1974, the said Grand Jury was conducting an investigation into the possible transportation and transfer of an unregistered firearm through interstate commerce, in violation of Title 18, United States Code, Sections 371 and 922.

4. It was material to the investigation described in Paragraph 3, hereof, that the Grand Jury determine the purpose for which the defendant, ISADORE MARION, had arranged for the delivery to him of an unregistered firearm which was to be transported from Syracuse, New York to Las Vegas, Nevada.

5. On or about December 20, 1973, ISADORE MARION, the defendant, having duly taken an oath that he would testify truthfully as a witness before the aforesaid Grand Jury, a body authorized by law to administer an oath, did give false and evasive answers to questions asked of him as hereinafter set forth.

\* \* \*

Q. Did you ever ask Mr. Dinero to do anything for you?

A. Yes, but I was just kidding around with him, what I asked him.



Q. What was it you asked Mr. Dinero to do for you when you were kidding around with him?

A. To get me a piece. I was --

Q. What do you mean when you say "piece"?

A. A pistol.

Q. Did you ask him anything else? Did you tell him what kind of pistol you wanted?

A. I can't remember if I did or didn't.

Q. You were kidding around with him?

A. Yes, sir. Really, I didn't mean it. I was just --

\* \* \*

Q. Do you remember asking Mr. Dinero or telling Mr. Dinero that the gun had to be unregistered?

A. Yes, I think I did say that.

Q. Why did you want an unregistered gun?

A. It sounded good.

Q. What does an unregistered gun mean to me? You think that a gun is being unregistered; what does unregistered mean?

A. It's not registered.

Q. Not registered to anyone?

A. Not registered down at the station.

Q. Or anywhere. In other words, if the gun is ever used, it can never be traced; isn't that what an unregistered gun means?

A. Yes, sir.

Q. Why did you want an unregistered gun?

A. I really didn't want one. I was kidding with him.

\* \* \*

Q. ...You had a conversation with Mr. Dinero?

A. Yes, sir.

(S.)

Q. You are aware that telephone conversation was recorded pursuant to a court wiretap?

A. Did I know it was?

Q. Do you know now it was?

A. Yes, now I know it was.

\* \* \*

Q. The conversation that you had with Mr. Dinero, that conversation occurred while you were in New York; you were at the Delmonico Hotel, you just left Syracuse; isn't that correct?

A. If you say so, yes, sir. You asked me about conversations. I'm telling you I can't remember conversations.

\* \* \*

Q. ...You say you were kidding around?

A. I was kidding, to the effect that I wanted a gun. I mean, I asked him for a gun and in a kidding way.

Q. Well, if you were kidding around with him, why did you even go so far as saying it had to be unregistered or you weren't interested? A gun is a gun.

A. I don't know why I said that. I never got a gun.

Q. Oh, come on, Mr. Marion. You say you never got a gun. You know Mr. Quatrone was intercepted in Chicago en route to Las Vegas, and you know he was carrying a 25 caliber Berretta automatic; you know that, don't you?

A. Yes, sir, I know that.

Q. So you say you never got the gun. The reason was, the sky marshals in Chicago took the gun away from Mr. Quatrone; isn't that the truth?

A. Then it must be the truth.

Q. You know it's the truth. Didn't Mr. Quatrone ever tell you that?

A. Oh, when he came to Vegas, yes. He told me he got stopped in Chicago.

\* \* \*

5a



Q. You say you were kidding around when you were talking to Dinero?

A. Half kidding, half serious.

Q. Let's get into the half serious, then. With respect to the half serious, what did you want an unregistered gun for?

A. I don't know why.

Q. By the way, Mr. Marion, you own a gun, don't you?

A. Yes, sir. I own a 22.

Q. That's registered to you, isn't it?

A. Yes, it is. That's registered downtown.

Q. Downtown meaning Las Vegas?

A. Yes, sir.

Q. What did you want the unregistered gun for?

A. Just to have another pistol around the house.

Q. Mr. Marion, a gun is a weapon that's used to kill people or used to kill things. You know that, don't you?

A. Protection.

Q. It's a destructive weapon, correct?

A. And to protect.

Q. Okay. You had a weapon, legally and lawfully registered to you in the State of Nevada. And if you had to use that weapon to protect yourself, you would not, by possessing that weapon, be in violation of any law because the gun was registered to you, correct?

A. Yes, sir.

Q. Now, Mr. Marion, will you explain to the members of the Grand Jury what you want the unregistered gun for insofar as your own protection is concerned, when you had the right to have a firearm in your house, you know, legally? Now, if you were going to protect yourself, you could have used the weapon registered to you and not be in violation of any law. What did you want the unregistered gun for?

A. I wanted it and didn't want it. I wanted to see if he could get me a gun.

9a

Q. Let's get into the unregistered gun again. You had told Mr. Dinero these other two things, or you might have. Having owned a gun legally, what did you want an unregistered gun for?

A. I really don't know why. I just wanted one.

\* \* \*

Q. ...[W]ell, do you remember telling Mr. Dinero that it was very important for you to have this gun and that the guy should be very careful when he was bring it out to you because they might detect it, so he should put it in a suitcase? Did you tell Mr. Dinero, "Have the guy put it in the suitcase, because they'll detect it if he carries it on him?"

A. Yes.

Q. Did you say that half jest or half seriously?

A. Could have been either way.

\* \* \*

6. On or about January 8, 1974, the defendant, ISADORE MARION, having duly taken an oath that he would testify truthfully as a witness before the aforesaid Grand Jury, a body authorized by law to administer an oath, did give false and evasive answers to questions asked of him as hereinafter set forth.

\* \* \*

Q. What were you going to do with this unregistered gun?

A. Well, in Vegas you can sell an unregistered gun for a lot of money.

Q. To who?

A. To anybody. There is a big market in Vegas for unregistered guns.

\* \* \*

Q. Now, Mr. Marion, you yourself have a registered gun, don't you?

A. Yes, sir.

Q. Your testimony is that you wanted this gun so that you could sell it?

10a



A. Yes, sir.

Q. You are clear on that?

A. Yes, sir.

Q. There is no doubt in your mind about that?

A. No doubt.

Q. You weren't going to keep it for yourself?

A. No sir.

Q. You weren't going to use it for yourself?

A. No, sir.

Q. Well, Mr. Marion, did you have anyone in mind particularly as to who you were going to sell this gun to?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. When you said before that it is very easy to sell an unregistered gun in Vegas, do you mean that there are people that would not otherwise be permitted to buy a gun lawfully, that these are the type of people that you are referring to that you were going to sell the gun to?

A. In Vegas, there is always a lot of different types of people in Vegas. I think it was one of the highest places for robberies in the world.

Q. Who were you going to sell the gun to, the robber or the robber?

A. Whoever would ask.

Q. To the victim or the robber?

A. As long as the money was right, anyone.

Q. How much were you going to ask for the gun?

A. I am sorry; you are making me laugh. Whoever would ask for the gun.

Q. Were you going to walk around with a sign on your chest saying "I have an unregistered gun, sold to the highest bidder?"

A. Certainly not.

Q. Now would you tell me if it was an unregistered gun?

A. I don't know, it's like anything else.

(Title 18, United States Code, Section 1503)

COUNT THREE

The Grand Jury further charges:

1. On or about December 20, 1973, in the Southern District of New York, ISADORE MARION, the defendant, did unlawfully, wilfully, knowingly and corruptly obstruct and impede and endeavor to obstruct and impede the due administration of justice in the manner hereinafter described.

2. On or about December 20, 1973, the defendant, ISADORE MARION, who had previously received a grant of immunity pursuant to Title 18, United States Code, Section 6002, appeared as a witness before a Grand Jury in the Southern District of New York, which was then and there inquiring into violations of federal law.

3. On or about December 20, 1973, the said Grand Jury was conducting an investigation into the possible interference with interstate commerce by threats or violence and interstate travel and transportation in aid of racketeering in connection with a plan to damage and destroy certain motor vehicles in violation of Title 18, United States Code, Sections 1951 and 371.

4. It was material to the investigation described in Paragraph 3 that the said Grand Jury ascertain (a) the purpose and objective of the plan to damage the said motor vehicles; and (b) the identities of those persons who participated in the scheme to damage the said motor vehicles.

5. On or about December 20, 1973, the defendant, ISADORE MARION, having duly taken an oath that he would testify truthfully as a witness before the said Grand Jury, a body authorized by law to administer an oath, did give false and evasive answers to questions asked of him as hereinafter set forth:

\* \* \*



Q. Did you ever have any business dealings with Poppo?

A. What kind of business dealings?

Q. Dealings where you asked him to do something for you where he asked you to do something for him. Were you ever engaged in any business transaction together?

A. Business?

\* \* \*

Q. Did you ever ask him to do anything for you or did he ever ask you to do anything for him?

A. Yes.

Q. When was that?

A. Dates, I can't remember. I really don't know dates.

\* \* \*

Q. That business transaction, was it something you asked him to do for you or was it something that he asked you to do for him?

A. I asked him to do for me.

Q. What was that?

A. What I asked him to do?

Q. Yes.

A. I think it was, mess up somebody's transmissions on the trucks.

Q. What do you mean, "mess up"?

A. Just so they wouldn't be in working order.

Q. Whose trucks?

A. Mr. Capazzo.

\* \* \*

Q. Let me ask you this. Does the date February 8, 1972, refresh your recollection?

A. February 8, 1972.

Q. Yes.

A. (Nods).

\* \* \*

Q. Now, will you tell the Grand Jury why you asked Mr. Tortora to mess up the Capazzo trucks?

A. Well, we were asking --

Q. Who is "we?"

A. I'm trying to figure -- please, I get confused, Mr. Aronwald. I only went to a certain grade in school and I can't think like you can.

Q. Mr. Marion, when you use the word "we", you know we're talking about more than one person?

A. Sometimes I override myself and I don't know what I'm saying.

Q. Take whatever time --

A. Please have patience with me. I don't want to insult anybody here. I'm being honest with you. We were trying to get a vote. When I say "we", meaning me. I was trying to get a vote from him.

Q. A vote from Poppo or Capazzo?

A. Capazzo.

Q. In connection with what kind of vote?

A. On an incinerator company that we were with.

Q. What's the name of that company?

A. Scientific Incineration Corporation.

Q. SID. Scientific --

A. Development, yes, sir.

\* \* \*

Q. What kind of a vote were you looking for from Mr. Capazzo in connection with this SID Company?

A. Let's see if I can remember. It was favorable to the way that I was thinking. I can't -- my mind can't get it.

\* \* \*

Q. ...Now, when you tell the Grand Jury, sir, that you asked Mr. Tortora to damage or mess up the transmissions of another man's trucks



and you tell the Grand Jury that the reason you were doing that was because you were looking for a vote in connection with this SID Company --

A. Yes, sir.

Q: -- I think the Grand Jury has a right, Mr. Marion, to expect you to be able to remember what that vote was in connection with, since it resulted in your taking rather, you know, positive action with respect to Mr. Tortora.

You were asking Mr. Tortora to violate the law, you know that, don't you?

A. Yes, sir.

Q. What was the vote for?

A. Really and truly now, if I can answer you to what you just said to me, sir, if I can remember, I really will tell you. I'm not trying to be evasive or trying to get out of it. I'm really trying to remember --

Q. Is it your testimony then, that you do not, as you sit here, now remember --

A. At this moment --

Q. -- what it was?

A. At this moment, I don't remember what the vote was for. If you give me a minute or two to try to remember, I'll try to give you the answer.

Q. Let's come back to that question. We'll go on and come back to it. When you asked Mr. Tortora to do this, were you doing this on your own initiative?

A. Yes, sir.

Q. Did you offer Mr. Tortora any money for it?

A. I think we said -- we, I -- I think I said "Don't do it for nothing." Something like that. "There is a price" or something. Something to that effect.

Q. In other words, are you telling the Grand Jury that you were doing this on your own initiative? Well, when you asked Mr. Tortora to do this, were you in effect representing someone else?

2.)  
A. No, sir. This was for me.

Q. If the trucks had been damaged -- we'll get to whether they were in a minute or not. If the trucks had been damaged, and if Mr. Capazzo came back to you and said, "Okay, I want \$3,000", where would you have gotten the \$3,000 from? Is it your testimony you would have paid it out of your own pocket?

A. Yes, I would have.

\* \* \*

Q. What I'm asking you now, sir, is, are you telling the Grand Jury, had those trucks been damaged you and Mr. Tortora --

A. They never done --

Q. Had the trucks been damaged and had you been presented with a bill by Mr. Tortora for the damage that was done to the trucks, it is your testimony that you would have paid that out of your own pocket?

A. Yes, sir.

Q. You weren't representing anyone?

A. No, sir. I made a statement that there is good people involved, just to impress Mr. Tortora that there was other people involved, but there really weren't.

Q. Were you trying to impress Mr. Tortora that there were other people involved?

A. So that he would do it.

Q. So he would do it?

A. Yes, sir.

Q. Well, do you recall seeing the transcript of that conversation that we're talking about? Isn't it a fact -- isn't it a fact that before you even said anything at all to Mr. Tortora about there being good people involved, that Mr. Tortora agreed to do the work for you?

A. Yes.

16a



Q. Well, if he had already agreed to do the work for you, why was it necessary to impress him with the fact there were other people involved?

A. I just wanted to impress him.

Q. You wanted to impress him?

A. I wanted him to think that I was with somebody big. I don't know.

Q. Isn't it a fact, before you even mentioned that to Mr. Tortora, Mr. Tortora told you that for you he would do it for nothing?

A. Yes, sir.

Q. And didn't you say to him, "Don't do it for nothing. There are good people involved here"?

A. To charge him for it. Yes.

Q. Let me ask you this question, Mr. Marion. If you were asking Mr. Tortora to do this for you and Mr. Tortora told you he would do it for you for nothing, why were you telling Mr. Tortora not to do it for nothing, that there were good people involved here who would pay for it?

A. Because maybe I would ask him to give me some of the money to give back to me.

Q. You would ask Mr. Tortora to give you back some of the money, to give back to you; but it was your money in the first place.

A. That's why it would be cheaper.

Q. Why would it be cheaper? Mr. Tortora agreed to do it for you for nothing.

A. Sir, really that's the reason I'm just giving you the answer, that's what it was. I was just trying to impress him.

Q. Do you remember how many trucks were involved?

A. No. I don't know how many trucks he has.

Q. Did you remember asking him -- do you remember him asking you how many trucks does Capazzo have?

A. To remember that conversation, sir, no, I don't. If you have the question, you can ask me. I'll remember if you say that's it.

Q. Do you remember telling Mr. --- I'm not telling you anything. I'm asking you. I'm asking you questions to see whether they refresh your recollection. Do you recall telling -- do you recall whether or not you told Mr. Capazzo or Mr. Tortora that Mr. Capazzo had seven or eight trucks?

A. I could have said that, sir. I don't remember. But I may have said it.

Q. Did you ever tell Mr. Capazzo that you yourself were not paying for the work that he was going to do?

A. Yes, I did say that.

Q. That was a lie?

A. Yes.

Q. Why?

A. I just didn't want him to think it was coming out of my pocket.

Q. But he already told you he would do it for you for nothing?

A. I know that.

Q. So in effect, you wouldn't have had to pay him anything?

A. I'm not lying. This is the way I do it.

This is the way I asked him to do it.

\* \* \*

Q. Do you remember telling Mr. Capazzo to mess up the transmissions of all of Capazzo's trucks?

A. I don't know if I said all, or two, or three or one.

Q. Did you want all of his trucks damaged?

A. No.

Q. Well, did you tell Mr. Capazzo you wanted them all damaged?

A. Mr. Capazzo?

Q. Mr. Tortora.

A. I can't remember, sir. Honest to God, I really don't remember. If you tell me what I said there, I'll agree with it. I don't know, I can't remember it.



Q. Mr. Marlon, you just got through telling the Grand Jury you didn't want all of Capazzo's trucks damaged. If you didn't want all of Capazzo's trucks damaged, why would you have told Tortora that you wanted them all damaged?

A. If I said all of them, then all --

Q. You didn't want all of them damaged?

A. I feel at this moment, at that time I didn't want them all damaged. I can't remember. I don't know what's in my mind. I'm being honest with you. I have a block.

Q. Is this something you do every day? You ask people to damage other people's property?

A. Absolutely not.

Q. So in other words, it's something that should stand out in your mind, shouldn't it?

A. Can I explain it in my words? Can I explain to the Grand Jury?

Q. Sure, please do.

A. If I ask someone -- if I ask someone to do a hairdo, the next day I would forget about it. I don't know why that's the way my mind is.

Q. Are you, Mr. Marion, trying to compare before this Grand Jury, doing a hairdo for someone to messing up someone's trucks?

A. No. I'm taking that out of context.

\* \* \*

Q. What kind of vote was it that you were looking for? Let's go back to that.

A. Okay. Can I have a minute or two to think?

Q. Sure.

A. I can't remember what the vote was about.

Q. You can't think about that?

A. I can't remember really. I'm really trying.

Q. Let's pass that to another question. You just got through

telling this Grand Jury the reason you wanted these trucks damaged was you were trying to get a vote out of Capazzo?

A. Yes, sir.

Q. Let's forget what the vote was about. Had Capazzo indicated to you that he was not going to vote your way?

A. Yes, I think he did, yes, sir.

Q. How did he tell you that; was that on the phone, in person?

A. I think it was in person.

Q. What did he say to you?

A. You asked me conversations three years ago.

Q. I'm asking you the substance of a conversation that prompted you to call someone and ask him to mess up this man's trucks. That's what I'm asking. You're right. I'm asking you to remember a conversation that occurred two years ago.

A. Which is hard to remember.

Q. Let me ask you a question. Did you ask Poppo Tortora to put a card on the trucks, "Courtesy of Isadore Marion," after the trucks were damaged?

A. No.

Q. You didn't. Right.

Q. How was Mr. -- how did you figure that by damaging Capazzo's trucks, you were going to be able to get him to switch his vote to you if there would have been no way for him to associate the damage to the trucks with you?

A. To tell the truth, I really don't know how I was going to do it.

\* \* \*

Q. And although Capazzo -- although Tortora told you that he would do it for you for nothing, you told him, you insisted anyway that he charge you?

A. Yes, I did.

Q. And the reason, you said before this Grand Jury, was because you figured you would be able to get money back from Tortora on it, from Poppo?

2011



A. Yes, sir.

Q. In other words, you were going to give him money so he could give you back some of your money?

A. Yes, sir.

\* \* \*

Q. You remember telling Tortora during that conversation, "Whatever it costs, let me know?"

A. Yes.

Q. Do you remember also telling him that, "It's all right, I ain't paying for it?"

A. Yes, sir.

Q. Do you also remember telling him, "Be fair, because there's good people involved?"

A. Yes, sir.

Q. It is your testimony here that if Mr. Tortora had later called you and said, "You owe me \$5,000", you wouldn't have paid him?

A. Not then and there, I couldn't have. I didn't have the money.

Q. If you didn't have the money -- if you didn't have the money and you were tight for cash, why did you tell Tortora to charge you after he told you he would do it for you for nothing?

A. Because I would pay him in payments.

Q. You would pay him in payments?

A. Yes, sir.

Q. Then what would you do; you would expect him to kick back some of the money to you?

A. I would ask him to lift so much off it.

Q. Where would you have gotten the money to pay? Would you have to borrow it?

A. If I had to, I would have borrowed it.

Q. You would have borrowed money to pay a man to do something when he told you he would do it for you for nothing?

A. I was trying to impress Poppo, because I thought he was a big guy in New York.

Q. You thought Poppo was a big guy in New York. Explain that to the Grand Jury.

A. I thought he was a big man.

Q. You thought he was a big organized crime guy, didn't you?

A. That's right. I thought he was a big man.

Q. You thought he was well connected with other organized crime people in New York?

A. Yes, sir.

Q. What organized crime people did you think that Poppo was connected with?

A. I don't know. I just thought he was big.

(Title 18, United States Code, Section 1503)

922



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4 Telephone: (702) 384-5563

5 Attorney for Defendant:

6 ISADORE MARION  
7

8 IN THE DISTRICT COURT OF THE UNITED STATES  
9 FOR THE SOUTHERN DISTRICT OF NEW YORK  
10

11 UNITED STATES OF AMERICA, )  
12 Plaintiff, )

13 vs. ) No. 74-Cr. 821 W.C.C.

14 ISADORE MARION, )  
15 Defendant. )  
16

17  
18 MOTION FOR DISCOVERY OF ILLEGAL  
19 ELECTRONIC INTERCEPTIONS

20 COMES NOW, the Defendant, ISADORE MARION, by and  
21 through his undersigned attorney, and moves this Honorable Court  
22 for an Order directing the Government to disclose any and all  
23 electronic surveillance conducted on this Defendant, and his  
24 present or past attorney, or any and all electronic surveillance  
25 in which this party was intercepted, pursuant to Court Order or  
26 otherwise.

27 This Motion is made and based upon the pleadings and  
28 records on file herein, the Points and Authorities attached  
29

30 . . . .

31 . . . .

32 . . . .

1 hereto and incorporated herein, and upon the argument to be  
2 presented at the time of the hearing of this Motion.  
3

4 Respectfully Submitted:

5 GOODMAN, SNYDER & GANG  
6

7 By Stephen Stein

8 STEPHEN STEIN, ESQ.  
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1 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
2 MOTION FOR DISCOVERY OF ILLEGAL ELECTRONIC INTERCEPTIONS

3 I.

4 THE GOVERNMENT SHOULD BE COMPELLED TO PRODUCE  
5 AN AFFIDAVIT SETTING FORTH AN ADMISSION OR  
6 DENIAL AS TO WHETHER OR NOT THERE HAS BEEN  
7 ANY ILLEGAL ELECTRONIC SURVEILLANCE ON ANY OF  
8 THESE DEFENDANTS OR ANY OF THEIR PAST AND  
9 PRESENT ATTORNEYS.

10 Title 18, U.S.C., Section 2515 and Gelbard v. United  
11 States, 408 U.S. 41 (1972) require the Government to refrain  
12 from using any evidence or information derived directly or in-  
13 directly from any illegal electronic surveillance. Defendant  
14 alleges that the Government may have conducted illegal electronic  
15 surveillance on him and his attorneys, both past and present.

16 Title 18, U.S.C., Section 3504 requires the Government  
17 to come forward and affirm or deny the occurrence of any illegal  
18 electronic surveillance. (See also Gelbard v. United States,  
19 supra, In Re Evans, 452 F.2d 1239 (D.C. Cir., 1971), and Beverly  
20 v. United States, 468 F.2d 732 (5th Cir., 1972)).

21 The proper procedure to be followed to meet these  
22 requirements is for the Government to submit an affidavit to  
23 this Court embodying their answer to this Motion. In Re Grumbles,  
24 453 F.2d 119 (3rd Cir., 1971).

25 Respectfully Submitted:

26 GOODMAN, SNYDER & GANG

27 Stephen Stein

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5 Attorney for Defendant:

6 ISADORE MARION  
7

8 IN THE DISTRICT COURT OF THE UNITED STATES  
9 FOR THE SOUTHERN DISTRICT OF NEW YORK  
10

11 UNITED STATES OF AMERICA, )  
12 Plaintiff, )  
13 vs. ) No. 74-Cr. 821 W.C.C.  
14 ISADORE MARION, )  
15 Defendant. )  
16 )  
17

18 MOTION TO DISMISS

19 COMES NOW, the Defendant, ISADORE MARION, by and  
20 through his undersigned counsel, and pursuant to Rule 12 of  
21 the Federal Rules of Criminal Procedure, respectfully moves this  
22 Court for an Order dismissing the above captioned indictment and  
23 in support of such Motion avers as follows:

24 1) Upon a reading of the Indictment in the instant  
25 matter, and upon information and belief, Defendant, ISADORE MARION,  
26 submits that evidence derived from a Court authorized electronic  
27 interception was presented before the Grand Jury which returned  
28 the instant Indictment. It is believed that said Court authorized  
29 electronic interception was conducted in furtherance of an  
30 investigation into alleged violations of Title 18, U.S.C.,  
31 Sections 891-894.  
32

32 . . . .



1           2) Defendant, ISADORE MARION, submits that this evi-  
2 dence was presented to the Grand Jury in violation of Title 18,  
3 U.S.C. § 2517(5), in that no application under this section was  
4 submitted to a judge of competent jurisdiction seeking authoriza-  
5 tion for the use of the results of the intercepted communication  
6 and no approval for the same was obtained, prior to said evidence  
7 being presented to the Grand Jury.

8           3) Defendant, ISADORE MARION, therefore submits that  
9 this evidence was presented to the Grand Jury unlawfully and so  
10 tainted the proceedings before the said Grand Jury as to require  
11 dismissal of the instant Indictment.

12           4) Defendant, ISADORE MARION, requests that he be  
13 allowed to support this Motion with a Memorandum of Points and  
14 Authorities following receipt of the materials requested in his  
15 Motion For Discovery and Inspection filed simultaneously with  
16 this Motion, and following the evidentiary hearing on this Motion  
17 if necessary. Defendant, ISADORE MARION, further respectfully  
18 requests that a complete transcript of the testimony and evidence  
19 presented to the Grand Jury be made available to him in order to  
20 aid the Court in its determination of this Motion. Defendant,  
21 ISADORE MARION, submits that a showing of "particularized need",  
22 Dennis v. United States, 384 U.S. 855 (1966), has been shown by  
23 this Motion and will further be shown at the evidentiary hearing  
24 on this Motion.

25           5) Defendant, ISADORE MARION, further moves to dismiss  
26 Count Two of the instant indictment in that said Court is multi-  
27 plicious with Count One of the Indictment. The Indictment charges  
28 the Defendant with false statements before the Grand Jury and  
29 with endeavoring to obstruct and impede the Grand Jury's investi-  
30 gations basing both charges on basically the same set of facts and  
31 answers given by the Defendant to the Grand Jury. The Defendant  
32

1 submits that by multiplying this set of facts into two serious  
2 offenses the Government is denying the Defendant due process  
3 of law, and the Government should be forced to elect under  
4 which charge it will proceed. The Defendant cites Rule 14 of  
5 the Federal Rules of Criminal Procedure in support of this  
6 contention.

7  
8 Respectfully Submitted:

9 GOODMAN, SNYDER & GANG

10  
11 By Stephen Stein

12 STEPHEN STEIN, ESQ.  
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7 Attorney for Defendant:  
8 ISADORE MARION

9 IN THE DISTRICT COURT OF THE UNITED STATES  
10 FOR THE SOUTHERN DISTRICT OF NEW YORK

11 UNITED STATES OF AMERICA, )  
12 Plaintiff, )  
13 vs. ) No. 74-Cr. 821 W.C.C.  
14 ISADORE MARION, )  
15 Defendant. )  
16 )

17 MOTION FOR RELIEF FROM PREJUDICIAL JOINDER

18 COMES NOW, the Defendant, ISADORE MARION, by and through  
19 his undersigned counsel, and moves, pursuant to Rule 14 of the  
20 Federal Rules of Criminal Procedure, for an Order severing Counts  
21 One for the purposes of trial from the other counts of this  
22 Indictment, or in the alternative, for an Order requiring the  
23 Government to elect under which Count of this Indictment they  
24 will proceed.

25 In support of this Motion, the Defendant cites Rule  
26 of the Federal Rules of Criminal Procedure, and the reasoning  
27 United States v. Pacente, 490 F.2d 661 (7th Cir., 1973), rev'd  
28 en banc, August 6, 1974 (unpublished as yet).

29 Respectfully Submitted:  
30 GOODMAN, SNYDER & GANG

31 By Stephen Stein  
32 STEPHEN STEIN, ESQ.  
230 Las Vegas Blvd. South  
Las Vegas, Nevada 89101

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA :

- v - :

ISADORE MARION, :  
Defendant. :

AFFIDAVIT IN OPPOSITION TO  
DEFENDANT'S PRE-TRIAL MOTIONS

74 Cr. 821 W.C.C.

-----X

CARL M. BORNSTEIN, being duly sworn, deposes and says:

1. I am a Special Attorney for the United States Department of Justice, assigned to the prosecution of the above-captioned case, and I am familiar with the facts and circumstances concerning it.

2. I submit this affidavit in opposition to the several pre-trial motions of defendant ISADORE MARION that were received by me on or about October 18, 1974.

MOTION TO SUPPLEMENT

The Government does not oppose this motion and if granted respectfully requests an appropriate period of time to respond.

DISCOVERY OF ELECTRONIC INTERCEPTIONS

The Government did conduct electronic surveillances of the defendant at his place of business and at his residence in Las Vegas, Nevada pursuant to the order of a United States District Court. Additionally, the Government has utilized and intends to introduce at trial certain interceptions of the defendant's conversations which were made by the District Attorney of the County of New York pursuant to an order of a justice of the Supreme Court of the State of New York.



With respect to any electronic surveillance of the defendant's present or past attorneys the Government only knows of two attorneys that have represented defendant: James LaRosa, Esq. of New York City, and his associates; and Oscar B. Goodman, Esq. of Las Vegas, Nevada, and his associates. No electronic surveillances of either Mr. LaRosa or Mr. Goodman or any of their associates are known to the Government. If defendant has been represented by any other attorney, he will have to advise the Government of their identities before a review can be made and the Court advised.

The Government consents to disclosure of the particulars of the electronic surveillances as reflected in response to defendant's motion for discovery and inspection.

DISCLOSURE OF CONFIDENTIAL INFORMANTS

The Government opposes this motion.

DISCLOSURE OF GRAND JURY RECORDS OF  
VOTING PROCEDURES

The Government opposes this motion in all respects.

DISCOVERY AND INSPECTION

Defendant moves for discovery and inspection pursuant to Rules 16 and 6(e) of the Federal Rules of Criminal Procedure. The Government's position with respect to each item requested is as follows.

1. Opposed.
2. The Government consents; however, other than the testimony of defendant before the federal grand jury. The Government knows of no other such material in its possession.
3. The Government consents; however, it has no such material in its possession nor are any tests or examinations pending.

( 3. )

4. The Government opposes this request and submits that in its present form the demand transcends the provisions of Rule 16(b) of the Federal Rules of Criminal Procedure. It is further submitted that unless defendant is sufficiently specific, a conclusory characterization of materiality would only place the burden for judging the applicability of that standard on the Government - a result all parties would undoubtedly rather avoid.

5. The Government consents in part. No co-conspirators to the crimes charged are known to exist. Defendant is charged with crimes based upon his appearance and testimony before a federal grand jury. During his testimony he was questioned about certain dealings and relationships he had with JACK DINERO, JAMES QUATRONE and VINCENT TORTORA. All of these men were known to defendant at that time. In all other respects the Government opposes this request.

6. The Government opposes; however, the Government has consented to disclose any reports as requested in Item 3.

7. Opposed.

8. Opposed.

9. The Government opposes this request except to the extent that it consents to disclose electronic surveillances in which defendant's conversations were intercepted as mentioned in Item 15 hereinbelow.

10. The Government is fully appreciative of its continuing legal and ethical duty to disclose exculpatory material pursuant to the Brady decision. No such information is now in the Government's possession and if such material is discovered or should be discovered with due diligence the Government will meet its obligations in this regard.



11. Opposed.

12. Opposed. This material is properly governed by Title 18, United States Code, Section 3500.

13. Opposed, except to the extent that such material is subject to the provisions of Title 18, United States Code, Section 3500.

14. No photographic identifications leading to the present indictment were used.

15. The existence of electronic surveillance by the Government and by state authorities has been acknowledged in response to defendant's motion for disclosure of such activity. All electronic surveillance was pursuant to Court orders issued by appropriate authority. The Government consents to this request to the following extent:

a) The Government will advise defendant of the name and model of any devices used to intercept his conversations.

b) The Government will provide an opportunity for defendant to hear the originals or copies of recordings of intercepted conversations in which he was a participant.

c) The Government will provide defendant with this material to the extent detailed in response to Item 18.

In all other respects the Government opposes this request.

16. Opposed.

17. No search warrants directed against defendant's person or property within his dominion and control were obtained.

18. The Government consents to the extent that it will provide defendant with a copy of the orders, applications and affidavits supporting the electronic surveillances that led up to and include the interception of defendant's conversations.

(5.)

19. The Government consents to the extent that it will disclose all photographs of defendant taken in the course of this investigation. In all other respects the Government opposes this request.

20. Opposed.

21. Opposed.

22. The Government consents.

23. The Government consents; except to the extent that the terms "supporting papers" constitute the work-product of attorneys for the Government.

24. No such applications or orders were utilized.

MOTION TO DISMISS

The Government opposes this motion in all respects.

PREJUDICIAL JOINDER

The Government opposes this motion in all respects.

WHEREFORE, except as consented to hereinabove, the Government respectfully requests that defendant's motions be denied in all respect.

CARL M. BORNSTEIN  
Special Attorney  
U.S. Department of Justice

Sworn and subscribed to before

me on

1974.



12  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA :  
- v - :  
ISADORE MARION, : 74 Cr. 821 W.C.C.  
Defendant. :  
-----X

GOVERNMENT'S MEMORANDUM OF LAW  
IN OPPOSITION TO DEFENDANT'S  
PRE-TRIAL MOTIONS

At the close of the recent pre-trial conference in the above-captioned matter, the Court reserved decision on two of defendant's pre-trial motions. With leave of the Court, the Government has been permitted to submit this memorandum concerning these outstanding matters.

In the remaining two separate motions, defendant has raised three issues. In his motion to dismiss, defendant argues that the entire indictment warrants dismissal because of the alleged failure of the Government to comply with Section 2517(5) of Title 18, United States Code with regard to evidence obtained from electronic surveillances. Within the same motion he also urges dismissal of Count Two of the indictment (charging Obstruction of Justice) because it is multiplicative of Count One (charging Perjury). And finally, in a separate motion, defendant requests severance of the Perjury Count under Rule 14 of the Federal Rules of Criminal Procedure alleging that the joinder of these counts is prejudicial.

As we shall demonstrate, defendant's arguments are not supported by the facts or law affecting this case.

POINT I

DEFENDANT'S RELIANCE UPON SECTION 2517(5)  
TITLE 18, UNITED STATES CODE, IS MISPLACED

Section 2517(5) of Title 18, United States Code deals with the permissible disclosure of evidence obtained in the course of court-authorized electronic surveillance when intercepted conversations constitute evidence of or relate to crimes other than those designated in the original order permitting the interceptions. Defendant, relying upon these provisions, and erroneously presuming the scope of the designated crimes, contends that the intercepted conversations could not be used by the Grand Jury to charge him with the crimes set out in the indictment in this case.

To begin with, and we believe this to be dispositive of defendant's attack, the Government submits that the intercepts in question fell within the ambits of the orders that initially authorized the surveillances.

Since defendant framed his argument, considerable disclosure has been made by the Government. Additional disclosure is continuing. When completed, the following facts will have emerged. When defendant was examined before the Grand Jury he was questioned about his participation in two conversations that had been intercepted. One of these conversations involved defendant and one JACK DINERO and concerned transportation of a weapon. The other involved



defendant and VINCENT TORTORA and concerned a plot to destroy trucks owned by a third individual. Each of the two conversations had been intercepted pursuant to orders issued by a Justice of the Supreme Court of the State of New York which authorized the New York County District Attorney to conduct the surveillances. (For brevity's sake the first of these orders will be referred to as the "Lounge" order and the second as the "Delmonico" order. Copies of both, and the supporting papers have been given to defendant and the Court.) The Government's continuing disclosure will reveal that the "truck" conversation was intercepted pursuant to the "Lounge" order and the "weapon" conversation pursuant to the "Delmonico" order. A review of those papers will provide ample support for the Government's position.

The "Lounge" order, inter alia, authorized interceptions to obtain evidence of the crimes of Grand Larceny by Extortion, Felonious Assault and Conspiracy to commit those crimes. (Art. 155, 120 105, New York State Penal Law). Additionally, by reference to the affidavit of the Assistant District Attorney, the order named VINCENT TORTORA as a party whose communications could be intercepted. Pursuant to these provisions, TORTORA was monitored talking to defendant about the planned destruction of the property of a third person and, in passing, whether defendant wanted the third party physically hurt.

The "Delmonico" order and the evidence obtained are just as explicit. Inter alia, this order authorized intercepting the communications of defendant for evidence of the crime of possession of dangerous weapons as a felony. (Art. 265 New York State Penal Law). Pursuant to these provisions defendant was monitored talking to JACK DINERO about the transportation of a firearm.

As we see it, even the most torturous interpretation would not support the proposition that the intercepted communications were not evidence of or did not relate to crimes designated in the orders of authorization. Even more specious is the suggestion that the provisions of Section 2517 were meant to govern the utilization of such evidence by the Grand Jury as opposed to disclosure of the evidence in the first place. Accordingly, the Government submits that the provisions of Section 2517 are inapplicable to the case at bar.

POINT II

SEVERANCE OF COUNT ONE IS NOT WARRANTED

As acknowledged by defense counsel, the authority cited in support of his motion for severance has been reversed. This reversal apparently harmonizes the Seventh Circuit's position with that of this circuit (United States v. Zweig 441 F.2d 114, cert. denied 403 U.S. 932, (1971)).



Additionally, we deem it appropriate to note that defendant's claim of prejudice is far less substantial than other similar claims that have been reviewed and rejected in this and the Seventh Circuit. (See United States v. Zweig, supra; United States v. Isaacs, 493 F.2d 1124, 1159 (7th Cir. 1974); United States v. Mitchell, 373 F.Supp. 1239, 1255 (SDNY 1973)). Notwithstanding the cited decisions, defendant's claim is evidently based on the theory that his ability to testify in his own behalf concerning the substantive charges is undermined by the possibility that the trial jury might infer from the perjury count that the grand jury already discounted his testimony. In defendant's case, however, severance would at best provide minimal relief. Wholly apart from such considerations as the prospective need for two trials, or the admissability of the same evidence to prove both the perjury and substantive counts, the fact that defendant's prior testimony would still be challenged by the substantive counts reveals the weakness of defendant's position. Since all the counts are bottomed upon defendant's testimony before a federal grand jury, the Government submits that denial of severance would not be an abuse of this Court's discretion.

( - 6 - )

POINT III

COUNTS ONE AND TWO OF THE  
INDICTMENT ARE NOT MULTIPLICITOUS

"'Multiplicity' is the charging of a single offense in several counts." (Geberding v. United States, 471 F.2d 55 (8th Cir. 1973)). While the recommended time for testing of the counts involved is after the production of evidence at trial (United States v. Schoenzel, 462 F.2d 765 (8th Cir. 1972), cert. den. 409 U.S. 984; United States v. Barash, 266 F.Supp. 126 (SDNY 1966)), the standard for this determination is clear: If the proof of guilt under one count requires proof of an element not required under the other count then the counts are not multiplicitous (United States v. Farinas, 308 F.Supp. 459 (SDNY 1969)).

The case at bar certainly meets this test. Count One of the indictment charges defendant with the crime of perjury. This charge is based upon two of defendant's answers under oath which are alleged to be "inconsistent to the extent that one of them is necessarily false." The gravamen of this crime is the inherent inconsistency of the two statements. On the other hand, Count Two of the indictment charges that defendant obstructed justice by giving false and evasive testimony before the grand jury. Though proof of the inconsistency alleged in Count One might well help to establish the requisite intent under Count Two, it certainly is not a required

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( - 7 - )

element of the crime. (See e.g. United States v. Cohn,  
452 F.2d 881 (2d Cir. 1971)).

CONCLUSION

Each of defendant's remaining motions should  
be denied in all respects.

Respectfully submitted,

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York

CARL M. BORNSTEIN  
Special Attorney  
U.S. Department of Justice

Of Counsel

4/1 a

1 lhmch

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 UNITED STATES OF AMERICA, :

6 v. : 74 Crim. 821

7 ISADORE MARION, :

8 Defendant. :

9 -----x

10  
11 BEFORE: HON. WILLIAM C. CONNER,

12 District Judge.

13 New York, New York

14 November 1, 1974 - 9:30 a.m.

15 PRESENT:

16 PAUL J. CURRAN, Esq.,  
17 United States Attorney for the  
18 Southern District of New York,  
By: CARL BORNSTEIN, Esq.,  
Assistant United States Attorney.

19 STEPHEN STEIN, Esq.,  
20 Attorney for Defendant.



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(2)

2 (Case called)

3 THE COURT: I have looked over the motions  
4 and the Government's response, and I can't fault the  
5 Government in any respect. It seems to me that they are  
6 giving you everything that you are legally entitled to.

7 I will hear you if you take violent exception  
8 to any of the positions the Government has taken.

9 MR. STEIN: Your Honor, the only one minor  
10 point where there is any disagreement, major disagreement,  
11 is on the wire tapping, the results of the wire taps in  
12 this case. I discussed this with Mr. Bornstein over the  
13 phone Wednesday. It is our position that we should be  
14 allowed to listen to or receive transcripts of any con-  
15 versation intercepted not only where Mr. Marion was  
16 in fact intercepted himself, but where he was mentioned,  
17 where he was named, or which related directly to the  
18 crimes charged here or the crime of which he was convicted

19 Other than that, there is no real major  
20 discrepancy between our stance and the Government's stance  
21 The reason I say that, your Honor, is basically there is  
22 a Brady argument. The conversations where Mr. Marion is  
23 a participant Mr. Bornstein has already agreed to let us  
24 hear those or give us transcripts, or both. But there  
25 may be conversations between two other individuals, not

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1 lhmch

(3)

2 Mr. Marion directly, where he is discussed or where what  
3 he is doing is discussed, or where it is related to this  
4 charge or the background of this charge, which may in  
5 fact be exculpatory to Mr. Marion.

6 THE COURT: If it is exculpatory, then that would  
7 come under the Brady rule and the Government is, I am  
8 sure, well aware of its obligation to furnish that  
9 material to you. Your request is not limited to that.  
10 You want everything, inculpatory as well as exculpatory  
11 material.

12 MR. STEIN: Because, your Honor, we believe that  
13 some of those conversations, while Mr. Bornstein wouldn't  
14 be aware that it is exculpatory, Mr. Marion would be.  
15 We think it would be the proper or better method for  
16 us to determine whether or not it is, in fact, exculpatory.

17 MR. BORNSTEIN: If I may be heard for a moment  
18 on this, your Honor, just generally addressing myself  
19 to the wire tap situation. As your Honor knows, we  
20 submitted the affidavit in opposition to join the issues.  
21 One reason for this was that because of both the  
22 physical distance between Mr. Goodman's office and New  
23 York, while we generally agreed, I think, as to what  
24 disclosure was going to be, we didn't have a chance to  
25 discuss this in person. With just the general schedule



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2 that evolved, I thought perhaps we might be able to limit  
3 some of the issues after the pretrial conference, and  
4 I would appreciate leave of the Court to submit  
5 memoranda on those issues that are not formally resolved.

6 With regard to the wire taps, first of all  
7 I'd like the record to reflect that I have handed to Mr.  
8 Stein this morning an order of the Supreme Court of the  
9 State of New York, No. -- eavesdropping warrant marked  
10 72/12, which authorized the interceptions of conversations  
11 over telephone numbers 475-9918 and 228-9834, subscribed  
12 to by Jimmy's Lounge; second interception authorized by  
13 the same order governing telephone number 674-9481,  
14 subscribed to by the L & S Coffee Shop.

15 These papers include the order of Judge  
16 Harold Birns, Justice of the New York State Supreme Court,  
17 the then District Attorney Frank Hogan, and the affidavit  
18 of Assistant District Attorney Ronald Goldstock of that  
19 office, as well as the affidavit of Sergeant Robert  
20 Nicholson of the District Attorney's Office Squad, New  
21 York D.A.'s office. Here is a copy for the Court, your  
22 Honor.

23 Secondly, we have turned over to Mr. Stein  
24 today an eavesdropping warrant which is numbered 72/32,  
25 authorizing the interceptions over telephone number

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2 355-2500, Extension 706 and 707, in the suite of  
3 Delmonico Hotel, 502 Park Avenue, and the copies include  
4 the order of Judge Harold Birns as well as the affidavit  
5 of Assistant District Attorney Ronald Goldstock of the  
6 County of New York, the then District Attorney Frank Hogan,  
7 and those are the papers that have been turned over.

8 If your Honor please, these orders -- well,  
9 let me address myself to them separately for the moment.

10 The first order, 72/12 has already been  
11 litigated in the trial of Vincent Rizzo, et al, which was  
12 Indictment No. 72 Cr. 1330. On appeal, the Second Circuit  
13 in a decision reported at 492 Fed.2nd 443 affirmed  
14 the decision of the District Court, Judge Carter, which  
15 upheld the legitimacy of that particular order,  
16 including minimization.

17 The second order, No. 72/32, was already litigated  
18 in the District Court before Judge van Pelt Bryan  
19 in Indictment No. 72 Cr. 1332. I am calling that the  
20 Delmonico wire. Rizzo, Marion and Mr. Robertazzi had  
21 been charged with an 894 violation. The wire order in  
22 the Delmonico case, or the Delmonico wire order, was  
23 handed up to the Court at the outset of that trial.  
24 Judge van Pelt Bryan reviewed the order and found it  
25 sufficient. The conviction was affirmed from the bench



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2 by the Second Circuit. We have no opinion at this point.  
3 Certiorari was denied, I believe, within about the past  
4 two weeks. We do not have an opinion on that as  
5 well. We are awaiting, and it is in transit, in the  
6 mail or being dug out of the Supreme Court files, your  
7 Honor, the transcript of the proceedings before Judge  
8 van Pelt Bryan.

9 That is the present status of the state wires  
10 that were utilized containing this indictment.

11 We also have, as I have disclosed in my  
12 affidavit, there was a federal order signed by Judge  
13 Roger Foley of Nevada on April 18th of 1972, which ran  
14 until May 3, 1972, on telephone numbers 702-735-2195,  
15 telephone listed at -- to Mr. Marion at 3889 Eastern  
16 Avenue, and telephone number 702-734-1440 or -41 -- I  
17 can't make this out -- registered to the Salon di Pompei.  
18 I believe that is at Caesar's Palace. I am in the process  
19 of trying to obtain a copy of that federal order in order  
20 to give it to Mr. Stein.

21 MR. STEIN: If I may interrupt you, are you  
22 sure about that number? That is the master number for  
23 Caesar's Palace.

24 MR. BORNSTEIN: No, I am not exactly sure. I  
25 am just advising you.

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2 The thrust of our position on the wire taps  
3 is as follows:

4 We have no evidence-- to my knowledge at this  
5 time, no evidence was obtained from the federal wire in  
6 Vegas. The balance of my remarks are addressed to the  
7 two state wires. In the Rizzo opinion, by reading both  
8 the brief and the decision by the Second Circuit, your  
9 Honor, the issue of notice or, in effect, the standing  
10 to contest the wire was raised by one of the co-defendants,  
11 a William Mizono, and in discussing whether or not  
12 Mr. Mizono should have been served with notice, they  
13 raised the fact that he did not have standing, in effect,  
14 because there were those conversations in which he was  
15 simply mentioned by other people. The Court held that  
16 in those circumstances it was a matter of the Court's  
17 discretion in the first instance as to whether he should  
18 have been applied -- whether notice should have been  
19 served on him.

20 This, in effect, I think your Honor will agree  
21 with the question of the concept of legal standing. We  
22 submit this is somewhat applicable to what Mr. Stein is  
23 saying here now regarding the disclosure. We are fully  
24 prepared to disclose the conversations as we have  
25 indicated. In effect, I think Mr. Stein may be putting



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2 together the Brady obligation with the lawful disclosure  
3 provisions governing eavesdropping.

4 In the event we actually have, or should discover  
5 a conversation which is clearly exculpatory governing  
6 Mr. Rizzo, we will certainly make Mr. Stein aware of it  
7 and the Court aware of it. In effect, if Mr. Stein's  
8 theory were to prevail, this would mean that prior to  
9 trial the defense would be entitled to a complete search  
10 of all wire tapping conducted by the Government, whether  
11 or not the defendant had standing in the first place  
12 to contest the wire. This would be, I think, the effect  
13 of Mr. Stein's reasoning, and we would be quite opposed  
14 to that sort of discovery in this case, your Honor.

15 MR. STEIN: Your Honor, if I may very briefly  
16 just counter on two points.

17 The discussion regarding the Rizzo case that  
18 Mr. Bornstein mentioned concerned whether or not that  
19 individual should have received notice or an inventory.  
20 That is a different aspect of Title 3 than what I am saying.  
21 I have no argument with the Second Circuit opinion in  
22 Rizzo regarding the inventory requirement, which is  
23 completely discretionary with the Court as to who should  
24 be served and who shouldn't be served. The fact is there  
25 is a Third Circuit case that goes even further than Rizzo,

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2 and that is United States v. Eastman, and I believe that  
3 was affirmed by the Supreme Court, although I am not sure,  
4 your Honor, on that.

5 On the point of being clearly exculpatory, I  
6 know, having been a government prosecutor, that if there  
7 is something that is clearly exculpatory, I know the  
8 Government will give it to us. That was not my point.  
9 My point was there may be a conversation mentioning  
10 Mr. Marion or dealing with Mr. Marion which is not, on  
11 its face, clearly exculpatory but which may in fact be  
12 exculpatory, and the Government would have no idea,  
13 having read that conversation or heard that conversation,  
14 that in fact it was so. All I am saying is that Mr.  
15 Marion is in the best position to determine whether or  
16 not those conversations are exculpatory.

17 THE COURT: You are limiting your motion to  
18 conversations in which Mr. Marion is specifically mentioned?

19 MR. STEIN: And which deal with the events  
20 upon which this indictment is based, the transfer of the  
21 gun or the blowing up of the automobiles, trucks.

22 MR. BORNSTEIN: Your Honor, if I may just  
23 pursue this one moment further, the indictment herein  
24 charges the defendant with crimes basically of his testimony  
25 in the grand jury. He was questioned in the grand jury



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2 about two transactions. We will call it the gun and  
3 we will call it the extortion concerning the conversation  
4 with Mr. Tortora. The crime, in fact, is committed before  
5 the grand jury. The issue there is whether he lied in  
6 discussing those incidents before the grand jury. Given  
7 that set of facts, I think that in view of that I think  
8 Mr. Stein's request is almost broad to the second degree.  
9 If we were litigating the substantive crime involved  
10 here, I would say there may be some greater merit to Mr.  
11 Stein's argument. But we are sort of dealing with some-  
12 thing that is one time removed. It is not a question  
13 whether or not he actually participated in either of  
14 those schemes. It is a question of whether his testimony  
15 can be controverted by independent proof.

16 THE COURT: Suppose, for example, that you  
17 have a conversation that although clearly not showing  
18 that what he said was true might be construed as showing  
19 that what he says is true. So you would construe it as  
20 not being Brady material, and yet a jury might conceivably  
21 construe it as exculpating him because it would at least  
22 tend to show that what he said was true.

23 MR. BORNSTEIN: I appreciate what your Honor  
24 says on this. The point I am making is that Mr. Marion  
25 before the grand jury knew the conversations that were

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2 being discussed. In the interim between the two major  
3 appearances, which is December 20th and January 8th,  
4 he was given transcripts of the two conversations in  
5 question, and that is what he was questioned about in  
6 fact. There was no mention of any other conversation.

7 This is why I am sort of suggesting that it is  
8 like a second-degree proposition. It is one time removed  
9 from what the actual crime would be. He knew the substance  
10 of the conversations that he was talking about when he  
11 gave his testimony, your Honor.

12 MR. STEIN: Both conversations, your Honor,  
13 involved Mr. Marion; there is no argument there. We will  
14 get a copy of those conversations?

15 MR. BORNSTEIN: No problem on that, your Honor.

16 MR. STEIN: What I am saying is that there may  
17 be other conversations which were not brought to his  
18 attention at the grand jury, which were not given to him,  
19 which did not involve him, which may in fact be exculpatory,  
20 conversations between John Doe and James Smith regarding  
21 Mr. Marion, saying, "Hey, I just spoke to Mr. Marion,  
22 and," et cetera.

23 The Government may read that and say, "That's  
24 not exculpatory," but in fact it may be. That's all I am  
25 saying. I am not saying they are or there aren't those



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2 conversations. I don't know. I haven't seen the  
3 transcript.

4 MR. BORNSTEIN: To take Mr. Stein's point,  
5 Mr. Marion was questioned about this conversation with  
6 Tortora and his conversation with Dinero. He was  
7 questioned about those two particular conversations. We  
8 maintain those are the conversations that we have to  
9 give over. One degree further would be whether or not we  
10 have to turn -- or, for that matter, any conversations  
11 between those two parties. We have no trouble with that.

12 The question arises, Mr. Stein is asking for  
13 any conversations between anyone intercepted that discussed  
14 Mr. Marion.

15 THE COURT: My understanding of what you are  
16 saying now is that he is being prosecuted solely because  
17 he lied about these two conversations.

18 MR. BORNSTEIN: Precisely, your Honor.

19 THE COURT: And you have got the conversations?

20 MR. BORNSTEIN: Which we are prepared to turn  
21 over.

22 THE COURT: Really, there is no conceivable  
23 conversation that could have been had between other  
24 people that would exculpate him for lying about the con-  
25 versations that he actually had.

53a

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2 MR. BORNSTEIN: If the testimony is sufficient  
3 on its face, that's exactly our position, your Honor.

4 MR. STEIN: We do not agree with that, your  
5 Honor, for one reason. Any charge of false statements  
6 before the grand jury or obstruction of justice, as these,  
7 are based upon background facts. The alleged perjury  
8 here is concerning a transfer of a gun in interstate  
9 commerce, brought from New York -- attempted to be brought  
10 from New York to Nevada. The questions asked Mr. Marion  
11 about that gun were, "Why did you want the gun? Did  
12 you know that the gun was coming?", et cetera, et cetera,  
13 on the face of the indictment.

14 All we are saying and all we are contending  
15 regarding the trucks also is that there may be conver-  
16 sations between these two other individuals or some  
17 other individuals that we don't even know about, in which  
18 they say, "Yes, we were joking around" -- well, that would  
19 be too obviously exculpatory -- "I talked to Izzy today  
20 and," et cetera. That may in fact show that Mr. Marion  
21 was not lying concerning why he wanted that gun or was not  
22 lying concerning his knowledge of the trucks.

23 THE COURT: But insofar as the gun is concerned,  
24 his testimony before the grand jury was self-contradictory.  
25 At one point he said he wanted the gun to keep it for



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2 himself, to have an extra gun around the house.

3 At another point he said he wanted to sell it  
4 because such guns would bring a fancy price on the black  
5 market.

6 MR. STEIN: That's correct.

7 THE COURT: That is self-contradictory. I  
8 can't imagine any conversation that could have been had  
9 between two other parties that would reconcile those two  
10 self-contradictory statements.

11 MR. BORNSTEIN: If I may, your Honor --

12 THE COURT: If you can suggest it, I am certainly  
13 willing to listen.

14 MR. BORNSTEIN: I may have misstated this before.  
15 We are prepared to give Mr. Stein the opportunity to  
16 hear any conversations -- any conversations -- in which  
17 Mr. Marion was a participant. We have no trouble with  
18 that. I may have misphrased that before.

19 MR. STEIN: I understood that, too.

20 THE COURT: I understand.

21 With respect to the other where he is accused  
22 of lying about having a conversation, again, I cannot  
23 conceive of anything that would exculpate him in any way.  
24 If in fact he had that conversation, then his testimony  
25 that he didn't have it is false. No conceivable conver-

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2 sation between two other parties would in any way  
3 exculpate him from lying about having the one conversation  
4 that the Court claims he did have and of which they have  
5 a recording.

6 MR. STEIN: Is that Count 2, your Honor?

7 THE COURT: Counts 2 and 3.

8 MR. BORNSTEIN: Those are the obstruction of  
9 justice charges.

10 MR. STEIN: There is more to that charge than  
11 just denying he had the conversations.

12 MR. BORNSTEIN: He does not deny either conver-  
13 sation that he is questioned on. The thrust of the  
14 indictment is the quality of answer.

15 THE COURT: I misunderstood you a minute ago,  
16 then. He denied the facts that are recited in the con-  
17 versations?

18 MR. BORNSTEIN: In such situations; perhaps,  
19 your Honor, it is mainly the evasive answers given when  
20 questioned about the substance of those conversations.

21 THE COURT: The basic question is whether the  
22 facts recited in the conversations were correct or  
23 incorrect, is that right?

24 MR. BORNSTEIN: No. For example, he is questioned,  
25 as the indictment reflects, about the conversation with



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2 Mr. Tortora. He is asked in substance, "On whose behalf  
3 were you doing this?" There is virtually a non sequitur  
4 in the answer where he claims that even though he was  
5 telling Mr. Tortora to change a price -- to charge a  
6 price because there is good people involved, he says  
7 there was no one else involved.

8 We claim, playing those answers one against  
9 the other in contradistinction to the tape shows that he  
10 was being evasive to obstruct the jury's inquiry.

11 MR. STEIN: There, your Honor, is the perfect  
12 example of where there may be other phone conversations  
13 which may exculpate Mr. Marion, and that is the situation  
14 where he is saying here on the face of these -- his  
15 answers to the grand jury, "There are other big people  
16 involved, charge a good price," and then he later on  
17 says he is paying for it himself.

18 There may in fact be converastions between  
19 Mr. Tortora and some other individual which may indicate  
20 that there were no other people involved which may in  
21 fact be exculpatory to Mr. Marion.

22 MR. BORNSTEIN: I think that that would clearly  
23 be -- I think that would jump out of the transcript as  
24 Brady. You are talking about something that we could not  
25 possibly infer because it would be so cryptic or so remote

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2 that you should have the random review of our file.

3 This is what I am contesting, Mr. Stein.

4 MR. STEIN: All I am saying is that there may  
5 be these conversations which the Government reads which  
6 they do not feel are exculpatory in any way, shape or  
7 form, but which Mr. Marion can say, "Look at this conver-  
8 sation. This means so-and-so," and may in fact be  
9 exculpatory.

10 I have a question for Mr. Bornstein on the  
11 record. Were these tapes in fact used in any other trial  
12 other than Mr. Marion's first indictment?

13 MR. BORNSTEIN: I believe the conversation  
14 between Mr. Marion and Mr. Tortora was introduced in  
15 the first trial of Mr. Marion.

16 MR. STEIN: I mean other than Mr. Marion's  
17 first trial, were the results of this wire tap ever  
18 produced in court and used in court?

19 MR. BORNSTEIN: Other conversations?

20 MR. STEIN: Other conversations, between Mr.  
21 Tortora and other individuals.

22 MR. BORNSTEIN: I believe so.

23 MR. STEIN: Then they are public record.

24 MR. BORNSTEIN: Those conversations would be.

25 MR. STEIN: Then you would have, I assume, no

58a



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2 objection to making those available.

3 MR. BORNSTEIN: I would have no objection to  
4 whatever is part of the public record.

5 MR. STEIN: Those conversations may in fact  
6 be exculpatory. I don't know.

7 MR. BORNSTEIN: I don't believe they dealt with  
8 Mr. Marion at all.

9 MR. STEIN: Perhaps we could solve this, your  
10 Honor, if Mr. Bornstein can go through these transcripts  
11 and say that there are no conversations in which Mr.  
12 Marion is mentioned. That would solve the problem, I  
13 believe.

14 THE COURT: A minute ago, as I understand it,  
15 you were asking for conversations in which he was mentioned  
16 or which referred in any way to these transactions.

17 MR. STEIN: My suggestions would cover half  
18 the problem, anyway.

19 THE COURT: Are you saying now that you will  
20 settle for that, if he will go through and tell you whether  
21 or not there are any conversations mentioning Mr. Marion?

22 MR. STEIN: Yes.

23 THE COURT: You will settle for that?

24 MR. STEIN: Yes. If there are, then we could  
25 reargue that issue.

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2 THE COURT: If there aren't, that will settle  
3 the matter. If there are, you can probably agree on  
4 them. If you cannot, come back and we will resolve it.

5 Anything further?

6 MR. STEIN: No, your Honor.

7 THE COURT: What about readiness for trial?

8 MR. STEIN: Mr. Bornstein and I have discussed  
9 that, and he is on trial in November and December.

10 MR. BORNSTEIN: I have a bank robbery case  
11 starting November 18th before Judge Motley.

12 Then I have Judge Bonsal, a 1511 obstruction  
13 case starting on December 16th.

14 Both, to my understanding, are final -- I am  
15 acting as though they are final trial dates.

16 MR. STEIN: Mr. Goodman is on trial beginning  
17 January 7th in Trenton in front of Judge Shecht in the  
18 State of New Jersey v. Eriketty, et al. However, we have  
19 discussed this, and if it is agreeable to the Court, the  
20 beginning of February would be fine for both parties  
21 here.

22 THE COURT: February 10th.

23 Off the record.

24 (Discussion off the record)

25 THE COURT: Defense counsel has indicated that



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2 he wants to press the motion to dismiss on the grounds  
3 that the electronic surveillance evidence was presented  
4 to the grand jury in violation of Title 18, Section 2517(5).  
5 The Government will have one week in which to file  
6 opposing memorandum.

7 MR. BORNSTEIN: Your Honor, addressing myself  
8 to the same motion, there is also the prejudicial joinder  
9 dismissal. I would just like to inquire what the status  
10 of that motion is at this point?

11 MR. STEIN: We would submit the motion on the  
12 memorandum. I don't believe any oral argument is  
13 necessary.

14 THE COURT: Can you get your -- you don't need  
15 a memorandum other than the recitation in the motion  
16 itself?

17 MR. STEIN: If I am not mistaken, your Honor,  
18 I believe there is a memorandum -- you are right, your  
19 Honor, it is just that one page.

20 THE COURT: Do you want to file anything further  
21 on it?

22 MR. STEIN: Your Honor, I read the Picenti  
23 opinion, circuit opinion, panel opinion, and I researched  
24 it, and the panel opinion was -- while it backed the point  
25 that I was making, as I was doing so I remembered in the

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2 back of my mind that there was a rehearing en banc pending  
3 or granted. I called the Second Circuit clerk and found  
4 that it had been reversed en banc. I have not seen the  
5 reversal. That was the only law that I found sufficient  
6 to cite for the proposition which I was stating, and  
7 being that it was reversed en banc, and I do not have a  
8 copy of the en banc opinion, there is nothing more  
9 that I can add than the logic and reasoning in the Picenti  
10 panel opinion.

11 The Seventh Circuit case which I came across,  
12 and I might have it back in the office, does not agree  
13 with the Picenti panel opinion.

14 THE COURT: What you are telling me is that both  
15 the Seventh Circuit and the Second Circuit are against  
16 your opinion, and you don't know of any law in favor of  
17 your position except this one reversed decision?

18 MR. STEIN: That is correct.

19 THE COURT: If the Government wishes, it may  
20 also file a memorandum in opposition to the motion for  
21 dismissal on a count of prejudicial joinder.

22 MR. BORNSTEIN: The motion to dismiss I am  
23 referring to is based on the 2517 problem and also addresses  
24 itself to the question of duplicitous necessary or  
25 duplicativeness of Counts 1 and 2. Those two, then, are

62a



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2 the only motions that have not been disposed of as of  
3 this time?

4 THE COURT: I believe that's correct. Do you  
5 disagree, Mr. Stein?

6 MR. STEIN: No, sir, I do not. I believe that's  
7 correct.

8 Well, the grand jury motion has not been ruled  
9 upon, but I would let that stand submitted on the brief.  
10 Mr. Bornstein made us a copy of his answer --

11 THE COURT: I was going to suggest, with respect  
12 to the motion for production of the records of the voting  
13 procedure of the grand jury, that if the Government will  
14 submit an affidavit to the effect that the grand jury  
15 voted on the counts of the indictment as presently worded,  
16 that would seem to dispose of the matter.

17 MR. BORNSTEIN: Judge, I would represent right  
18 now that almost every grand juror in the room had a copy  
19 of the indictment before him.

20 MR. STEIN: I don't believe that was the problem.  
21 Did they vote on each count individually?

22 MR. BORNSTEIN: I wasn't in the room.

23 THE COURT: If you will submit an affidavit  
24 setting forth that each count was voted on individually  
25 in haec verba, that should dispose of that motion. If

63a

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2 you can't put in that affidavit, then I think Mr. Stein  
3 is entitled to the discovery he seeks.

4 MR. BORNSTEIN: Your Honor, then let me address  
5 myself to that. When the vote was taken, each and every  
6 member of the grand jury -- possibly two of them may have  
7 been looking at one copy -- they had it before them.  
8 They were reading it. I stepped out when they actually  
9 voted, so I don't know the actual procedure of how they  
10 proceeded.

11 THE COURT: Can you get the foreman of the grand  
12 jury? Can you speak to him and put an information and  
13 belief affidavit to confirm that they voted on a count-by-  
14 count basis?

15 MR. BORNSTEIN: I shall.

16 MR. STEIN: That would resolve all the motions.

17 THE COURT: That would resolve that, all right.

18 MR. BORNSTEIN: Your Honor, there is one other  
19 thing. It has come to my attention that neither Mr. Stein  
20 nor Mr. Goodman are members of the bar of the Southern  
21 District of New York. We would ask that within as short  
22 a time as possible whatever steps are to be taken should  
23 be complied with.

24 MR. STEIN: Your Honor, on the record, I am a  
25 member of the New York courts; I am admitted to the bar of



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2 the State of New York. After being admitted to the bar  
3 I left New York, courtesy of the United States Navy,  
4 and I have never had the opportunity to be admitted before  
5 the Southern District or any of the federal courts in  
6 the State of New York. I will stop at the Clerk's office,  
7 fill out whatever forms are necessary, and find somebody  
8 to move my admission at the earliest possible time.

9 THE COURT: We can admit you pro haec vice,  
10 but you still are going to have to have local counsel.  
11 The rules of this court require someone upon whom papers  
12 can be served.

13 MR. STEIN: We will get local counsel and  
14 notify Mr. Bornstein and your Honor of who that individual  
15 will be.

16 THE COURT: All right.

17 - - -  
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7 Attorneys for Defendant:

8 ISADORE MARION

9  
10 IN THE UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF NEW YORK  
12

13 UNITED STATES OF AMERICA, )  
14 Plaintiff, )  
15 vs. ) No. 74-Cr. 821 W.C.C.  
16 ISADORE MARION, )  
17 Defendant. )  
18

19 MOTION TO SUPPRESS TESTIMONY AND TO DISMISS

20 COMES NOW, the Defendant, ISADORE MARION, by and  
21 through his attorneys, OSCAR B. GOODMAN, ESQ. and STEPHEN STEIN,  
22 ESQ., and respectfully requests this Honorable Court to issue  
23 an Order suppressing the testimony of the Defendant given before  
24 a United States Grand Jury on December 20, 1973, and January 8,  
25 1974, and dismissing Counts Two and Three of the Indictment and  
26 in support of this Motion avers as follows:

27 1. The Defendant, ISADORE MARION, was indicted by a  
28 Federal Grand Jury for making false declarations before a grand  
29 jury and obstruction of justice in violation of 18 U.S.C. § 1623  
30 and 1503. The basis for these charges is the Defendant's  
31 testimony to a Federal Grand Jury on December 20, 1973, and  
32 January 8, 1974.

33 2. The Defendant, ISADORE MARION, filed a Motion to  
34 Supplement Motions Upon Receipt of Material Pursuant to Discovery

66a



1 and Inspection in this case. On December 13, 1974, certain  
2 materials were received by the Defendant pursuant to discovery  
3 in this matter. Among the material received were transcripts  
4 of the Grand Jury proceedings involving the Defendant.

5 3. The Defendant, ISADORE MARION, appeared before a  
6 Federal Grand Jury on December 18, 1973; relevant portions of  
7 the transcript before the Grand Jury reveal the following  
8 colloquy:

9  
10 \* \* \*

11 "Q All right, Mr. Marion. Let me  
12 advise you that on this date, December 18th,  
13 the Honorable Marvin E. Frankel, a United  
14 States District judge for this court signed  
15 an order granting you immunity under the law  
16 and that order reads:

17 'In pertinent part as follows:  
18 Ordered that the said Isadore Marion appear  
19 on December 13, 1973, Room 1404, before the  
20 said Grand Jury and that he be and hereby is  
21 ordered and compelled to testify and produce  
22 evidence with respect to the matters under  
23 inquiry before the said Grand Jury.

24 'It is further ordered that pur-  
25 suant to the immunity provision of Title 18,  
26 United States Code, that you are obligated  
27 to testify.'"

28 \* \* \*

29 "MR. AKONWALD: Mr. Marion, another  
30 thing you should know and tell your lawyer is  
31 as I indicated to you before, Judge Frankel  
32 has this date December 18th signed an Order

1 granting you what is called testimonial immu-  
2 nity. Title 18, United States Code, Section  
3 6002. And when you come back here on Thursday  
4 you should be prepared to give testimony because  
5 if you refuse to testify on Thursday in spite  
6 of the immunity order signed by Judge Frankel  
7 today, then you will be taken before Judge  
8 Frankel and an application will be made that  
9 you be cited for contempt. What I'm explain-  
10 ing to you is as a result of this Order of  
11 immunity you no longer can incriminate your-  
12 self as a result of your testimony. And that  
13 being the case, you no longer can claim your  
14 Fifth Amendment privilege against self-incrim-  
15 ination.

16 "Now that this Order has been signed, you  
17 are under a legal obligation to testify before  
18 the Grand Jury. You can no longer refuse to  
19 answer by invoking your Fifth Amendment.

20 "Do you understand that?

21 "THE WITNESS: Yes, sir, I do."

22  
23 4. Also among the materials received on December 13,  
24 1974, pursuant to discovery in this matter, was a copy of the  
25 Order granting the Defendant, ISADORE MARION, immunity, signed  
26 by United States District Judge Marvin E. Frankel on December 18,  
27 1973. The last paragraph of said Order reads as follows:

28 "It is further ordered that pursuant to the  
29 immunity provision of Title 18, United States  
30 Code, Section 6002, no testimony or other in-  
31 formation compelled from ISADORE MARION,  
32 pursuant to this Order, or any information



1 directly or indirectly derived from such  
2 testimony, may be used against ISADORE  
3 MARION in any criminal case except a  
4 prosecution for perjury or for contempt  
5 as described in the last sentence of  
6 Title 18, United States Code, Section  
7 6002." (Emphasis Added).  
8

9 18 U.S.C. § 6002 reads as follows:

10 "Whenever a witness refuses, on the  
11 basis of his privilege against self-in-  
12 crimination, to testify or provide other  
13 information in a proceeding before or  
14 ancillary to--

15 (1) a court or grand jury of the  
16 United States,

17 (2) an agency of the United States,  
18 or

19 (3) either House of Congress, a  
20 joint committee of the two Houses, or a  
21 committee or a subcommittee of either  
22 House,

23 and the person presiding over the proceed-  
24 ing communicates to the witness an order  
25 issued under this part, the witness may  
26 not refuse to comply with the order on the  
27 basis of his privilege against self-incrimi-  
28 nation; but no testimony or other information  
29 compelled under the order (or any information  
30 directly or indirectly derived from such  
31 testimony or other information) may be used  
32 against the witness in any criminal case,

1                   except a prosecution for perjury, giving a  
2                   false statement, or otherwise failing to  
3                   comply with the order."

4  
5                   5. On the basis of the facts derived from the  
6 materials supplied to the Defendant pursuant to discovery in  
7 this case, the Defendant submits that Counts Two and Three of  
8 the instant Indictment should be dismissed. These Counts are  
9 charged as violations of 18 U.S.C. § 1503; the Order of Immunity  
10 specifically precludes use of the Defendant's testimony against  
11 him except for a prosecution for perjury (18 U.S.C. 1621-23) or  
12 contempt. It is obvious from a reading of these Counts of the  
13 Indictment that the Defendant's testimony pursuant to the  
14 Immunity Order is being used as a basis for this prosecution  
15 under 18 U.S.C. § 1503, in violation of both the Order of Im-  
16 munity and 18 U.S.C. § 6002.

17                  6. Further on the basis of the facts derived from the  
18 materials supplied to the Defendant pursuant to discovery in  
19 this case, the Defendant submits that his testimony at the Grand  
20 Jury should be suppressed in toto on the ground that said tes-  
21 timony was obtained in violation of the constitutional rights  
22 of the Defendant in that the instant Immunity Order was signed  
23 ex parte by Judge Frankel in this matter without the Defendant  
24 being afforded notice or a hearing prior to being deprived of  
25 his constitutional rights under the Fifth Amendment to the Con-  
26 stitution of the United States.

27                  . . .

28                  . . .

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This Motion is made and based upon all the papers and pleadings on file herein and upon the Memorandum of Points and Authorities attached hereto and incorporated herein.

OSCAR B. GOODMAN, ESO.

and

STEPHEN STEIN, ESQ.

By OSCAR B. GOODMAN, ESO.  
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Attorneys for Defendant

. . .  
. . .

1 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
2 MOTION TO SUPPRESS TESTIMONY AND TO DISMISS

3 Rule 6(d) of the Federal Rules of Civil Procedure and  
4 Rule 45(d) of the Federal Rules of Criminal Procedure provide  
5 for notice of a hearing five (5) days before the time specified  
6 for the hearing, unless the Court or the Rules change the time  
7 period. The Government has rarely asserted that an immunity  
8 hearing can be held ex parte. In In re Kinoy, 326 F.Supp. 407  
9 (S.D.N.Y., 1971), the Government at first argued that an immun-  
10 ity order should be signed ex parte, but then did not follow  
11 through with its assertion. Judge Motley remarked in the  
12 court's opinion:

13 "At first, the Government asserted that the  
14 order could be signed ex parte. Although  
15 the court was inclined to disagree with the  
16 Government, In re Bart, 304 F.2d 631 (1962),  
17 a decision on the issue was unnecessary in  
18 view of the Government's voluntarily serv-  
19 ing Miss Kinoy with the relevant papers,  
20 and the Government's failure to press the  
21 point." 326 F.Supp. at 408.  
22

23 Rules 5(a) and (b) of the Federal Rules of Civil  
24 Procedure set forth when and how the papers should be served.  
25 There is authority that these rules are applicable to immunity  
26 hearings. The court in In re Bart, 304 F.2d 631 (D.C. Cir.,  
27 1962) stated:

28 "Normally, the application and supporting  
29 documents should be served in accordance  
30 with the Rules. F.R. Civ. P., Rules 5(a),  
31 (b), 6(d)." 304 F.2d at 637.  
32



1 Similarly, the court in In re Grand Jury Investigation [Frank],  
2 317 F.Supp. 792 (E.D. Pa., 1970) stated:

3  
4 "As immunity from prosecution in lieu of con-  
5 stitutional privilege is so important a matter,  
6 procedural fairness indicates that the appli-  
7 cation and supporting documents should be  
8 served in accordance with the Federal Rules of  
9 Civil Procedure. See Fed. R. Civ. P. 5(a),  
10 (b), 6(d), 81(a)(3) and 7(b). Adequate notice  
11 must be afforded to the prospective witness to  
12 insure him a full and fair opportunity to  
13 point out formal defects in the Government's  
14 application." 317 F.Supp. at 796.

15 However, the Bart court also stated:

16  
17 "But, for good cause shown, the court may  
18 shorten the period of notice or vary its  
19 form. See F.R. Civ. P., Rule 6(d)."

20 At least one court has relied on this statement in finding no  
21 error by the district court in holding the immunity hearing  
22 immediately following the witness' refusal to testify, although  
23 there is no indication that the district court had even consider-  
24 ed the effect of Rule 6. The court in United States v. Weinberg  
25 439 F.2d 743 (9th Cir., 1971) stated:

26  
27 "Rule 6(d) also provides that a different  
28 period may be fixed by the court. In  
29 effect, that is what happened here; the  
30 district court denied appellant's motion  
31 for a continuance and ordered that the  
32 section 2514 proceeding be had almost

1 immediately after the respective appellants  
2 had refused to testify before the grand  
3 jury." 439 F.2d at 746.

4  
5 See also, In re Russo, 448 F.2d 369 (9th Cir., 1971).

6 The Defendant here does not argue that five days no-  
7 tice was necessarily required prior to a hearing, but that some  
8 notice and a hearing was required. An order compelling testi-  
9 mony, which acts to supplant a constitutional privilege, is a  
10 very serious matter and at the very least, the Government should  
11 be required to notice a proposed witness and hold a hearing  
12 prior to any court signing such an order.

13 A witness' right to a hearing prior to a grant of  
14 immunity is clearer than his right to notice. In re Evans, 452  
15 F.2d 1939 (D.C. Cir., 1971); In re Vericker, 446 F.2d 244 (2nd  
16 Cir., 1971); United States v. DiMauro, 441 F.2d 428 (8th Cir.,  
17 1971); In re Bart, 304 F.2d 631, (D.C. Cir., 1962); In re Grand  
18 Jury Investigation [Frank], 317 F.Supp. 792 (E.D. Pa., 1970);  
19 but the nature and extent of the hearing required has generally  
20 not been well defined. The court in In re Bart, supra, gave  
21 some indication that a hearing would not be extensive:

22 "While the witness is entitled to notice and  
23 must be given an opportunity to be heard be-  
24 fore being compelled to testify, the full  
25 panoply of trial is not appropriate. . . .

26 The hearing is primarily intended to afford  
27 the witness an opportunity to point out for-  
28 mal defects in the application or the govern-  
29 ment's failure to comply with the necessary  
30 preliminaries." 304 F.2d at 637.  
31  
32 . . .



1           Only one decision states that a witness has no right  
2 to notice or a hearing, Licata v. United States, 429 F.2d 1177  
3 (9th Cir., 1970), judgment vacated as moot, 400 U.S. 938. The  
4 Ninth Circuit, in a later case, discussed the requirement of  
5 Rule 6 of the Federal Rules of Civil Procedure in connection  
6 with contempt hearings, and held that Rule 6 must be followed  
7 absent unusual circumstances. United States v. Alter, 482  
8 F.2d 1016 (9th Cir., 1973). This holding should logically apply  
9 to immunity hearings as well.

10           While most of the authorities cited to this point  
11 dealt with "transactional" immunity under 18 U.S.C. § 2514, the  
12 procedures involved in an immunity hearing under "use" immunity  
13 (18 U.S.C. § 6002-6003) are virtually the same. The notice  
14 requirement discussed above should, if submitted, be equally  
15 applicable to the "use" immunity statute as it is to the  
16 "transactional" immunity statute.

17           Regarding the scope of the immunity hearing, discussed  
18 above, in a transactional immunity hearing, courts exercise a  
19 certain amount of supervision over the process, insuring that  
20 statutory conditions for transactional immunity are met. The  
21 situation is somewhat different regarding use immunity. The  
22 immunity statute, unlike the transactional immunity statute,  
23 does not contain any requirement that the investigation be  
24 related to alleged violations of specific statutes. The Govern-  
25 ment usually argues that the courts have no authority to refuse  
26 to issue a use immunity order, that the role of the court is  
27 purely ministerial. Section 6003 provides that when requested  
28 by the United States Attorney, upon approval by the Attorney  
29 General, the Deputy Attorney General, or designated Assistant  
30 Attorney General, a district court shall issue the immunity  
31 order. The Government's position has been that beyond a review  
32 to establish that the required procedures have been complied

1 with, e.g., that there is in fact indication of the proper  
2 Justice Department approval, the court has no role in the use  
3 immunity situation. However, under any immunity statute, in-  
4 cluding the use immunity statute, courts have the power to  
5 review an immunity application to determine that the proposed  
6 order would not infringe upon a witness' constitutional rights.  
7 In re Baldinger, 356 F.Supp. 153 (C.D. Cal., 1973). No statute  
8 can compel a court to issue orders which violate a person's  
9 constitutional rights. It is clear that a proper function of  
10 the courts is to act as a check on the improper use of legisla-  
11 tive and executive investigatory powers. As the Supreme Court  
12 stated, concerning legislative proceedings, in Powell v.  
13 McCormack, 395 U.S. 486, 506 (1969), quoting from Kilbourn v.  
14 Thompson, 103 U.S. 168, 199 (1880):

15 "Especially is it competent and proper for  
16 this court, to consider whether its [the  
17 legislature's] proceedings are in conformity  
18 with the Constitution and laws, because,  
19 living under a written constitution, no  
20 branch or department of the government is  
21 supreme; and it is the province and duty of  
22 the judicial department to determine in cases  
23 regularly brought before them, whether the  
24 powers of any branch of the government. . .  
25 have been exercised in conformity to the  
26 Constitution; and if they have not, to treat  
27 their acts as null and void."  
28

29 And as the court stated in Watkins v. United States, 354 U.S.  
30 178, 187-188 (1957), involving witnesses before a Congressional  
31 committee:

32 . . .



1 "It is unquestionably the duty of all citizens  
2 to cooperate with the Congress in its efforts  
3 to obtain the facts needed for intelligent  
4 legislative action. It is their unremitting  
5 obligation to respond to subpoenas, to respect  
6 the dignity of the Congress and its committees  
7 and to testify fully with respect to matters  
8 within the province of proper investigation.  
9 This, of course, assumes that the constitu-  
10 tional rights of witnesses will be respected  
11 by the Congress as they are in a court of  
12 justice. The Bill of Rights is applicable  
13 to investigations as to all forms of govern-  
14 mental action. Witnesses cannot be compelled  
15 to give evidence against themselves. They  
16 cannot be subjected to unreasonable search  
17 and seizure. Nor can the First Amendment  
18 freedoms . . . be abridged."

19  
20 All these statements apply equally to a grand jury as to a  
21 congressional committee.

22 Additionally, there is some evidence in the legislat  
23 background of § 6002, et seq. that it was not intended to pre-  
24 clude judicial review. At House of Representatives hearings in  
25 1969 on the Federal Immunity of Witnesses Act, later enacted  
26 in almost identical form as 18 U.S.C. § 6002, et seq., Profess  
27 Robert G. Dixon, Jr., a consultant to the National Commission  
28 Reform of Federal Criminal Laws, testified. The Commission  
29 had originally drafted the bill which included the use immunity  
30 statute; Professor Dixon commented on that bill as follows:

31 "[T]his is not an anti-court bill. The courts  
32 came into the matter only in 1954 as a procedural

1 element and have operated since only in minis-  
2 terial fashion and only under a few statutes.  
3 We continue that [in the use immunity bill].  
4 None of this precludes a jurisdictional check  
5 [to safeguard the witness] against the agency  
6 exceeding its jurisdictional, or even beyond  
7 that a court check to see if there is an over-  
8 reaching in the process of immunizing somebody  
9 just as a matter of due process." Hearings on  
10 H.R. 11157 and H.R. 12041 Before Subcommittee  
11 No. 3 of the House Comm. on the Judiciary, 91st  
12 Cong., 1st Sess., ser. 14 at 69 (1969).  
13 (Emphasis Added).

14 Thus on both a constitutional and a statutory basis,  
15 courts have the authority to review immunity applications.

16 In regard to the Motion to Dismiss, the Defendant  
17 respectfully submits that the language of 18 U.S.C. § 6002 and  
18 the language of the Order of Immunity itself require dismissal  
19 of Counts Two and Three of the instant Indictment. In addition,  
20 the following is submitted. All immunity statutes have included  
21 an exception which allows the Government to prosecute a witness  
22 for perjury committed during the course of compelled testimony.  
23 This exception is justified on the grounds that immunity protects  
24 only from prosecution for past crimes, not for ones yet to be  
25 committed.  
26

27 In United States v. Hockenberry, 474 F.2d 247 (3rd  
28 Cir., 1973) the court considered the scope of the perjury excep-  
29 tion as set forth in 18 U.S.C. § 2514. Hockenberry was appeal-  
30 ing his conviction of making false declarations before the  
31 grand jury (18 U.S.C. § 1623, a perjury statute). During the  
32 course of the trial the Government had, over defendant's



1 objection, used certain truthful sections of Hockenberry's gr  
2 jury testimony in an attempt to impeach his testimony when he  
3 took the stand in his own defense. The Government argued that  
4 its use of Hockenberry's truthful statements before the grand  
5 jury fell within the exception for perjury prosecutions. It  
6 argued that the immunity grant did not protect against use of  
7 perjurious statements made before the grand jury, and that it  
8 also allowed use of all other truthful statements made on the  
9 same occasion.

10 The court rejected that argument, finding that  
11 definition of the perjury exception too broad:

12  
13 "But for the grant of immunity Hockenberry  
14 would have been privileged to refuse to  
15 admit to the grand jury his wrongdoing in  
16 the execution of affidavits to obtain search  
17 warrants. And if immunity that deprived  
18 him of that privilege is to be, as constitu-  
19 tionally it must, coextensive with the  
20 privilege itself, his compelled admission of  
21 wrongdoing cannot later be used to discredit  
22 his effort to defend himself against a charge  
23 of some other wrongdoing. 'Immunity from  
24 the use of compelled testimony . . . prohibits  
25 the prosecutorial authorities from using the  
26 compelled testimony in any respect. . . .'  
27 Powell, J., in Kastigar v. United States,  
28 406 U.S. 441, 453." 474 F.2d at 250.

29 . . .  
30 . . .  
31 . . .  
32 . . .

1 For the reasons listed above, the Defendant, ISADORE  
2 MARION, submits that this Motion to Suppress and Dismiss should  
3 be granted.

4 Respectfully Submitted:

5 OSCAR B. GOODMAN, ESQ.

6 and

7 STEPHEN STEIN, ESQ.

8  
9 By

10 OSCAR B. GOODMAN, ESQ.  
11 230 Las Vegas Blvd. South  
12 Las Vegas, Nevada 89101  
13 Telephone: (702) 384-5563

14 Attorneys for Defendant

15 CERTIFICATE OF SERVICE BY MAILING

16 The undersigned hereby certifies that a true and  
17 correct copy of the above and foregoing Motion to Suppress  
18 Testimony and to Dismiss, together with attached Memorandum of  
19 Points and Authorities in Support of Motion to Suppress Testimony  
20 and to Dismiss, was, on this 7th day of January, 1975, mailed,  
21 postage prepaid, to CARL M. BORNSTEIN, Special Attorney, United  
22 States Department of Justice, Room 1307, 26 Federal Plaza, New  
23 York, New York 10007.

24 \_\_\_\_\_  
25 OSCAR B. GOODMAN  
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2 STEPHEN STEIN, ESQ.  
3 Goodman and Snyder  
4 230 Las Vegas Blvd. South  
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6 Telephone: (702) 384-5563

Attorneys for Defendant:

ISADORE MARION

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF NEW YORK

10 UNITED STATES OF AMERICA, )  
11 Plaintiff, )  
12 vs. ) No. 74-Cr. 821 W.C.C.  
13 ISADORE MARION, )  
14 Defendant. )  
15 )  
16

17 MOTION TO DISMISS

18 COMES NOW, the Defendant, ISADORE MARION, by and  
19 through his attorneys, OSCAR B. GOODMAN, ESQ. and STEPHEN STEIN,  
20 ESQ., and respectfully moves that the instant indictment be  
21 dismissed on the grounds that CARL M. BORNSTEIN, JEROME MERIN  
22 and WILLIAM I. ARONWALD, Special Attorneys with the United  
23 States Department of Justice, were not specially appointed by  
24 the Attorney General within the meaning of 28 U.S.C. 515(a),  
25 and specifically directed by the Attorney General within the  
26 meaning of said Section 515(a) to conduct legal proceedings in  
27 the Southern District of New York, and more particularly, to  
28 present and prosecute this indictment against this Defendant;  
29 and further, that this action is not being prosecuted by the  
30 United States Attorney for the Southern District of New York,

31 . . .

32 . . .

8/a

1 and therefore, the indictment is illegal and void, and this  
2 Court has no jurisdiction in the premises.

3 OSCAR B. GOODMAN, ESQ.

4 and

5 STEPHEN STEIN, ESQ.

6  
7 By OSCAR B. GOODMAN, ESQ.  
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Telephone: (702) 384-5563

10 Attorneys for Defendant

11 CERTIFICATE OF SERVICE BY MAILING

12 The undersigned hereby certifies that a true and cor-  
13 rect copy of the above and foregoing Motion to Dismiss was, on  
14 this \_\_\_\_ day of January, 1975, mailed, postage prepaid, to  
15 CARL M. BORNSTEIN, Special Attorney, United States Department of  
16 Justice, Room 1307, 26 Federal Plaza, New York, New York 10007.  
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19 OSCAR B. GOODMAN  
20 OSCAR B. GOODMAN  
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7 Attorneys for Defendant:

8 ISADORE MARION

9  
10 IN THE UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF NEW YORK  
12

13 UNITED STATES OF AMERICA, )  
14 Plaintiff, )  
15 vs. ) No. 74-Cr. 821 W.C.C.  
16 ISADORE MARION, )  
17 Defendant. )  
18

19 MOTION FOR BILL OF PARTICULARS AND DISCOVERY

20 COMES NOW, the Defendant, ISADORE MARION, by and  
21 through his attorneys, OSCAR B. GOODMAN, ESO. and STEPHEN STEIN,  
22 ESO., and, in connection with his Motion to Dismiss filed this  
23 date, moves for an Order that the Government furnish the follow-  
24 ing:

25 1. All intra-departmental documents pertaining to the  
26 appointment of CARL M. BORNSTEIN, JEROME MERIN and WILLIAM I.  
27 ARONWALD, and others, as Special Attorneys, attached to the  
28 New York City Regional Office of the Organized Crime Strike  
29 Force by the Attorney General of the United States.

30 2. All intra-departmental documents relating to  
31 specific directions by the Attorney General of the United States  
32 authorizing the presentment and prosecution of this action  
33 against this Defendant.

34 . . .

1           3. All documents pertaining to the role played by the  
2 United States Attorney for the Southern District of New York  
3 in connection with the presentment and prosecution of this  
4 indictment.

5           4. All unpublished departmental guidelines, agree-  
6 ments, memorandums of understanding, and regulations which touch  
7 upon the following: The basic authority of said CARL M.  
8 BORNSTEIN, JEROME MERIN and WILLIAM I. ARONWALD and others,  
9 Special Attorneys, to represent the United States, their authority  
10 to appear before Grand Juries and otherwise prosecute the  
11 violations alleged in this indictment, the relationship and  
12 division of authority between the said Special Attorney and the  
13 United States Attorney for the Southern District of New York  
14 and the legislative history of Section 515(a) of 28 U.S.C.

15           5. To produce all documents and memorandums pertaining  
16 to the said CARL M. BORNSTEIN, JEROME MERIN and WILLIAM I.  
17 ARONWALD and others, Special Attorneys' efforts to secure  
18 authority from their superiors to prosecute this Defendant in  
19 connection with the subject matter of this indictment.

20           6. To state who, whether the Attorney General personal-  
21 ly, or some other person, appointed said CARL M. BORNSTEIN,  
22 JEROME MERIN and WILLIAM I. ARONWALD and others as Special  
23 Attorneys and in connection therewith to produce all documents  
24 constituting said appointment, and if not made by the Attorney  
25 General, all documents authorizing the appointing authority.

26           The Defendant further moves that all the aforesaid  
27 documents be produced before this Court in camera inspection  
28 to determine the relevancy to the issues raised by the attached  
29 Motion to Dismiss.

30 . . .

31 . . .

32 . . .



1 The Defendant further says that the information asked  
2 for by way of discovery and inspection is material to the  
3 preparation of his defense, and further says that this request  
4 is reasonable.

5 OSCAR B. GOODMAN, ESQ.

6 and

7 STEPHEN STEIN, ESQ.

8  
9 By OSCAR B. GOODMAN, ESQ.  
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12 Attorneys for Defendant

13 CERTIFICATE OF SERVICE BY MAILING

14 The undersigned hereby certifies that a true and co  
15 rect copy of the above and foregoing Motion for Bill of Parti  
16 culars and Discovery was, on this \_\_\_\_\_ day of January, 1975,  
17 mailed, postage prepaid, to CARL M. BORNSTEIN, Special Attorn  
18 United States Department of Justice, Room 1307, 26 Federal  
19 Plaza, New York, New York 10007.  
20

21  
22 OSCAR B. GOODMAN  
23 OSCAR B. GOODMAN  
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7 Attorneys for Defendant

8 ISADORE MARION

9  
10 IN THE UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF NEW YORK  
12

13 UNITED STATES OF AMERICA, )  
14 Plaintiff, )  
15 vs. ) No. 74-Cr. 821 W.C.C.  
16 ISADORE MARION, )  
17 Defendant. )  
18

19  
20 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
21 DEFENDANT'S MOTION TO DISMISS AND MOTION FOR BILL  
22 OF PARTICULARS AND DISCOVERY  
23

24 The Defendant, ISADORE MARION, relies upon the case of  
25 United States v. Williams, 16 Cr.L. 2225 (W.D. Mo. 12/3/74), the  
26 opinions in that matter in full as attached hereto which preceded  
27 the decision and which illustrate the rationale of the authoring  
28 court, together with the now familiar rationale concerning  
29 decision-making in high places as set forth in United States v.  
30 Giordano, 15 Cr.L. 3033 (5/13/74).  
31

32 Respectfully Submitted:

OSCAR B. GOODMAN, ESQ.  
and  
STEPHEN STEIN, ESQ.

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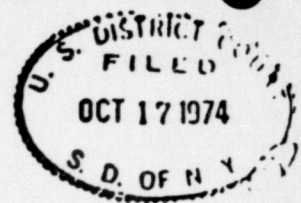
Attorneys for Defendant

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OSCAR B. GOODMAN



OSCAR R. GOODMAN, ESQ.  
STEPHEN STEIN, ESQ.  
Goodman, Snyder & Gang  
230 Las Vegas Blvd. South  
Las Vegas, Nevada 89101

Telephone: (702) 384-5563

Attorney for Defendant:

ISADORE MARION

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, )  
Plaintiff, )  
vs. ) No. 74-Cr. 821 W.C.C.  
ISADORE MARION, )  
Defendant. )

MOTION FOR RELIEF FROM PREJUDICIAL JOINDER

COMES NOW, the Defendant, ISADORE MARION, by and through his undersigned counsel, and moves, pursuant to Rule 14 of the Federal Rules of Criminal Procedure, for an Order severing Count One for the purposes of trial from the other counts of this Indictment, or in the alternative, for an Order requiring the Government to elect under which Count of this Indictment they will proceed.

In support of this Motion, the Defendant cites Rule 14 of the Federal Rules of Criminal Procedure, and the reasoning in United States v. Pacente, 490 F.2d 661 (7th Cir., 1973), rev'd. en banc, August 6, 1974 (unpublished as yet).

Respectfully Submitted:

GOODMAN, SNYDER & GANG

By *Stephen Stein*  
STEPHEN STEIN, ESQ.  
230 Las Vegas Blvd. South  
Las Vegas, Nevada 89101

*Motion Denied  
So ordered  
4/21/75*

*William P. Lane,  
U.S.D.J.*

LAW OFFICES  
GOODMAN, SNYDER  
& GANG  
LAS VEGAS, NEVADA

88a



CONNER, D. J.:

Defendant has presented no evidence whatsoever which would support a conclusion that there was any irregularity in the voting procedures of the Grand Jury. Under these circumstances, there is no reason for the Court to allow defendant to inquire into the procedures followed by the Grand Jury. Cf. United States v. Niedelman, 356 F.Supp. 979, 983 (S.D. N.Y. 1973); United States v. National Marketing, Inc., 306 F.Supp. 1238, 1241 (D.Minn. 1969).

SO ORDERED.

William C. Conner  
United States District Judge

Dated: New York, New York

April 22, 1975

CONNER, D. J.:

1. Defendant's argument that the contents of the intercepted conversations were presented to the Grand Jury in violation of 18 U.S.C. § 2517(5) is totally without foundation. The intercepted communications clearly related to the crimes designated in the orders of authorization.

2. Defendant's motion to dismiss Count Two of the Indictment as duplicative of Count One is denied. The mere fact that the two charges arise out of a common nucleus is insufficient to sustain the present motion. At trial the Government will have the burden of proving the material elements of each crime.

SO ORDERED.

*William C. Conner*  
United States District Judge

Dated: New York, New York

April 22, 1975

*W a*



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA, :

Plaintiff, :

74 Cr. 821  
(WCC)

- against - :

ISADORE MARION, :

MEMORANDUM

Defendant. :

----- X

CONNER, D. J.:

Presently before the Court are motions by defendant to dismiss Counts Two and Three of the Indictment which charge him with obstruction of justice, 18 U.S.C. § 1503, and to suppress the testimony which he gave before the Grand Jury on December 20, 1973 and January 8, 1974.

I.

Defendant contends that Counts Two and Three should be dismissed since the December 18, 1973 Order of Immunity under which he testified, as well as 18 U.S.C. § 6002, precludes the use of his testimony in any criminal prosecution against him, except a prosecution for perjury or contempt.

This contention, however, improperly construes both the Immunity Order and Section 6002. When Judge Frankel

issued the Immunity Order, he specifically incorporated the last sentence of 18 U.S.C. § 6002 into the Order. That sentence states that no testimony or other information compelled under the order (or information derived therefrom)

"may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order."

There can be no doubt that a prosecution for obstructing justice is permissible where, as here, the government charges that the defendant "fail[ed] to comply with the order" by giving false and evasive answers to questions asked of him. Indeed, in United States v. Cohn, 452 F.2d 881 (1971), cert. denied, 405 U.S. 975 (1972), the Court ruled that a witness who appears before a grand jury under a grant of immunity and testifies falsely and evasively, has obstructed justice within the meaning of 18 U.S.C. § 1503.

## II.

Defendant further contends that all of the testimony elicited before the Grand Jury should be suppressed on the ground that such testimony was obtained in violation of his constitutional rights inasmuch as the Immunity Order was signed ex parte. In this connection, defendant



asserts that courts have the power to review an immunity application to determine whether the order would impinge upon the witness's constitutional rights, and that they should use this power as a check on the improper exercise of legislative and executive powers.

It is clear that the courts' functions with respect to applications for immunity orders are largely ministerial. In re Kilgo, 484 F.2d 1215, 1220-21 (4th Cir. 1973). Indeed, the court need only determine whether the application meets the procedural and substantive requirements of the authorizing statute. Urasaki v. United States District Court, 504 F.2d 513, 514 (9th Cir. 1974).

Although defendant cites In re Baldinger, 356 F. Supp. 153 (C.D.Cal. 1973), for the proposition that the court may, in its discretion, decline to grant an immunity order when granting the order would violate the constitutional rights of the defendant, that case is inapposite. In Baldinger the Court declined to grant an immunity order which by its terms permitted prosecution for the witness's prior false statements. Thus, the Court found that the immunity order in question did not provide immunity co-extensive with the witness's Fifth Amendment privilege against self-incrimination. No such question is presented by the case at bar. Defendant merely contends that he did not have the opportunity to be heard prior to the

entry of the order. In the absence of any showing that he was prejudiced by the order, this claim clearly does not rise to constitutional proportions. This Court, therefore, sees no reason to go beyond Judge Frankel's finding that the Government complied with the statutory requirements for the issuance of an immunity order.

William L. Conner  
United States District Judge

Dated: New York, New York  
April 22, 1975

9/1/2



United States of America vs.

# United States District Court for

DEFENDANT

SOUTHERN DISTRICT OF NEW YORK

ISADORE MARION

DOCKET NO. 74 Crim. 821

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH	DAY	YEAR
11	20	75

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Oscar B. Goodman, Esq.  
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly and contrary to an oath that he would testify truthfully before a grand jury of the United States did make false material declarations, and did unlawfully, wilfully, knowingly and corruptly obstruct and impede and endeavor to obstruct and impede the due administration of justice.

(Title 18, United States Code, Section 1623,  
Title 18, United States Code, Section 1503.)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER

Imposition of sentence is suspended. Defendant is placed on probation for a period of THREE (3) YEARS on each of counts 1, 2 and 3 to run concurrently with each other, but consecutively to the period of FIVE (5) YEARS probation that defendant is now serving, subject to the standing probation order of this court.

SPECIAL CONDITIONS OF PROBATION

That defendant have no association with any person who is known or widely reputed to be involved in criminal activity.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

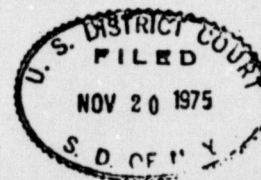
SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

William C. Corner  
William C. Corner

Date 11/20/75



It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

COMMITMENT RECOMMENDATION

95a

## UNITED STATES DISTRICT COURT

FOR THE

58371-JIH

## SOUTHERN DISTRICT OF NEW YORK

To MR. ISADORE MARION  
3889 Eastern Avenue  
Address Las Vegas, Nevada 89109

Docket No. 74 Cr 821

In accordance with authority conferred by the United States Probation Law, you have been placed on probation this date, 11/20/75, for a period of 3 years by the Hon. WILLIAM C. CONNER United States District Judge, sitting in and for this District Court at New York City, subject to the standing probation order of this Court (see other side).

## CONDITIONS OF PROBATION

It is the order of the Court that you shall comply with the following conditions of probation:

- (1) You shall refrain from violation of any law (federal, state, and local). You shall get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer.
- (2) You shall associate only with law-abiding persons and maintain reasonable hours.
- (3) You shall work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. When out of work you shall notify your probation officer at once. You shall consult him prior to job changes.
- (4) You shall not leave the judicial district without permission of the probation officer.
- (5) You shall notify your probation officer immediately of any change in your place of residence.
- (6) You shall follow the probation officer's instructions.
- (7) You shall report to the probation officer as directed.

The special conditions ordered by the Court are as follows:

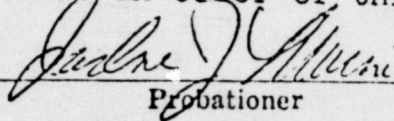
IMPOSITION OF SENTENCE SUSPENDED: PROBATION THREE YEARS TO RUN CONCURRENTLY WITH PRESENT PROBATION NOW IN EFFECT FOR FIVE YEARS.  
SPECIAL CONDITIONS: DEFT. HAVE NO ASSOCIATION WITH ANY PERSON WHO IS KNOWN OR WIDELY REPUTED TO BE INVOLVED IN CRIMINAL ACTIVITY.

In order to insure compliance with the Conditions of Probation, you may NOT serve as an informer while on probation, and you must promptly and truthfully answer all inquiries directed to you by the Probation Officer.

I understand that the Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

I have read or had read to me the above conditions of probation. I fully understand them and I will abide by them. These conditions were made an Order of this Court, June 6, 1932 (see copy attached).

(Signed)

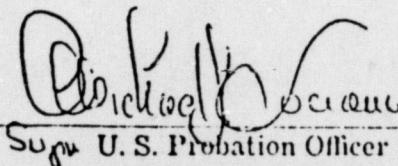


Probationer

11-20-75

Date

You will report as follows:

  
Supr U. S. Probation Officer

11/20/75

Date



UNITED STATES DISTRICT COURT

S. Dist. of N.Y.

USA

- v -

Docket Number

74K1-821

W.C.C.

(District Court Judge)

FRANK MARION

NOTICE OF APPEAL

Notice is hereby given that Frank Marion, defendant appeals to the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ order ☐ other (specify) \_\_\_\_\_ entered in this action on \_\_\_\_\_ (Date)

Date \_\_\_\_\_  
To: \_\_\_\_\_

Address

230 Las Vegas Blvd N.  
Las Vegas, Nev. 89101

Phone Number

702-334-1163

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

QUESTIONNAIRE

TRANSCRIPT ORDER

DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED INCLUDE DATE

- ☒ I am ordering a transcript  
☐ I am not ordering a transcript  
Reason:  
☐ Daily copy is available  
☐ U.S. Attorney has placed order  
☐ Other. Attach explanation

- Prepare transcript of  
☒ Pre-trial proceedings  
☒ Trial  
☒ Sentence  
☐ Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (CJA Form 106) ☒ Method of payment ☒ Funds ☐ CJA Form 21

ATTORNEY'S signature \_\_\_\_\_

DATE \_\_\_\_\_

COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals

Date order received \_\_\_\_\_

Estimated completion date \_\_\_\_\_

Estimated number of pages \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

(Court Reporter)

ORIGINAL

97a

1 rm/lf

(32)

2 MR. BORNSTEIN: At this time, your Honor,  
3 I don't think a recess is necessary, but we have to change  
4 reels, but we have the location marked.

5 THE COURT: All right.

6 (Pause)

7 MR. BORNSTEIN: At this time, your Honor, we are  
8 ready to play Government's Exhibit 3 in evidence, the con-  
9 versation, reel A-2717, that portion of it that reflects  
10 the conversation between Jack Denaro and Isadore Marion  
11 on March 16, 1972.

12 (Tape played)

13 MR. BORNSTEIN: May I collect the transcripts  
14 from the jury, your Honor?

15 THE COURT: Yes, please.

16 Was there anyone who could not hear satisfactorily?

17 I understand that you have nothing further until  
18 your witness at 1:45?

19 MR. BORNSTEIN: That's correct, Judge.

20 THE COURT: We are going to take a little early  
21 noon recess today and come back a little earlier than  
22 usual. We will recess now until 1:45, and I am going to  
23 ask you again, don't discuss the case with your fellow  
24 jurors or anyone else until you finally go into the jury  
25 room for your final deliberations.

(Luncheon Recess)

97a(1)



1 rm/lf

(51)

2 his testimony on those dates. The portions which are not  
3 relevant to the present case have been left out, without  
4 prejudice to offering them later on if they become relevant  
5 for any reason. They are also being received without deciding  
6 for the moment whether you will be permitted to take these  
7 exhibits with you into the jury room. Any other exhibits  
8 that have been introduced thus far you can have in the jury  
9 room on your request. As to whether these will be available  
10 to you in the jury room, that has not been decided, but  
11 if you can't remember any part of the testimony and want to  
12 hear any of it again, you can send a note out to me through  
13 the marshal that will be stationed at the door of the jury  
14 room and you can hear any part of the testimony over again  
15 even though I don't permit you to have the actual physical ex-  
16 hibit with you in the jury room.

17 As Mr. Bornstein just indicated, he is to read  
18 these to you, he is going to read the questions as they were  
19 posed by Mr. Aronwald at the time Mr. Marion appeared before  
20 the grand jury and his associate, Mr. Abzug, is going to be  
21 seated on the witness stand and he is going to read the  
22 answers as they were given by Mr. Marion to the questions  
23 before the grand jury.

24 MR. BORNSTEIN: Thank you, your Honor.

25 THE COURT: Just imagine, if you can, that this is

*Na*

1 rm/lf

2 Mr. Aronwald asking the questions and this is Mr. Marion  
3 answering.

4 MR. BORNSTEIN: I direct your attention to the  
5 transcript of December 18, 1973, please, Mr. Abrug.

6 "MR. ARONWALD: Mr. Foreman, this is Mr. Isadore  
7 Marion who appeared before you last week and who was directed  
8 to reappear here today.

9 "Would you advise the witness he's still under oath?

10 "THE FOREMAN: You are still under oath.

11 "ISADORE MARION, having been previously  
12 sworn, resumed the stand and testified further as  
13 follows:

14 "EXAMINATION BY MR. ARONWALD:

15 "Q Mr. Marion, you are represented by counsel,  
16 aren't you?

17 "A I refuse to answer on the grounds it  
18 might -- I'll have to -- on the advice of counsel I  
19 respectfully decline to answer on the grounds my answer might  
20 tend to incriminate me.

21 "Are you telling the grand jury, Mr. Marion,  
22 that you think that answering the question as to whether  
23 or not you are represented by a lawyer can tend to incriminate  
24 you?

25 "A On the advice of counsel I respectfully

97a



1 rm/lf

2 "decline to answer on the grounds that my answer might tend  
3 to incriminate me.

4 "Q All right, Mr. Marlon. Let me advise  
5 you that on this date, December 18th, the Honorable Marvin  
6 E. Frankel, a United States District judge for this  
7 court signed an order granting you immunity under the law  
8 and that order reads:

9 'In pertinent part as follows: Ordered  
10 that the said Isadore Marion appear on December 13, 1973,  
11 Room 1404, before the said grand jury and that he be and  
12 hereby is ordered and compelled to testify and produce evi-  
13 dence with respect to the matters under inquiry before the  
14 said grand jury.

15 'It is further ordered that pursuant to  
16 the immunity provision of Title 18, United States Code, that  
17 you are obligated to testify.'

18 "Now, I'm going to give you ten more  
19 minutes. We have been waiting outside for your lawyer to co-  
20 since two o'clock. I'm going to give you ten more minutes  
21 and I'm going to call you in and we are going to go forward.

22 "Do you understand?

23 "A Yes.

24 "Q What I'm explaining to you is as a result  
25 of this Order of Immunity you no longer can incriminate your

100 a

1 rm/lf

(54)

2 "self as a result of your testimony and that being the case,  
3 you no longer can claim your Fifth Amendment privilege  
4 against self-incrimination.

5 "Now that this order has been signed, you  
6 are under a legal obligation to testify before the grand jury.  
7 You can no longer refuse to answer by invoking your Fifth  
8 Amendment.

9 "Do you understand that?

10 "A Yes, sir, I do.

11 "MR. ARONWALD: So we will see you on Thursday  
12 afternoon at two o'clock."

13 MR. TAIKEFF: Your Honor, may I interject at this  
14 point? I think the government will agree that the quotation  
15 from the order of Judge Frankel appears to have a misprint  
16 in it, and that is the date which was quoted was December  
17 13, 1973, and probably should have read December 18, 1973,  
18 which is the date these events took place.

19 MR. BORNSTEIN: Your Honor, I have the original  
20 order here by Judge Frankel and counsel is right. I  
21 read the minutes literally. The date of the order is Decem-  
22 ber 18th. Whether it was misspoken in the grand jury or  
23 mistyped, I don't know. I am offering the order into  
24 evidence in this trial as well and I would like to read that  
25 to the jury at this time.

101 a



1 rm/lf

2 THE COURT: Well, not until it has been received  
3 in evidence.

4 MR. TAIKEFF: I would ask your Honor to defer  
5 ruling on that so that we can study the entire order and  
6 then perhaps subsequently we can advise your Honor.

7 MR. BORNSTEIN: Counsel obtained a copy of the  
8 order quite sometime ago.

9 MR. TAIKEFF: Would your Honor give us some time  
10 to state our position?

11 THE COURT: All right. Go ahead with the reading  
12 of the transcript.

13 MR. BORNSTEIN: Your Honor, you indicated there  
14 were redactions in the minutes and, therefore, may I indi-  
15 cate where there is a redaction indicated that there is a  
16 page or several pages missing, that's all?

17 MR. TAIKEFF: I think so that it makes sense to  
18 the jury, that would be quite appropriate.

19 THE COURT: All right.

20 MR. BORNSTEIN: Mr. Abzug, would you direct your  
21 attention to the transcript of December 20, 1973, page 2:  
22 "I S I D O R E M A R I O N, recalled as a witness  
23 by the Grand Jury, having been previously sworn,  
24 testified as follows:

25 "MR. ARONWALD: Let the record reflect that this

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rm/lf

Marlon

(56)

"Witness, Mr. Isadore Marlon, has twice previously appeared before this grand jury, one on December 18th and the other one being December 13th of this year."

THE COURT: It should read examination by Mr. Aronwald?

MR. TAIKEFF: Yes, your Honor.

MR. BORNSTEIN:

"Q Now, Mr. Marlon, the last time you were here, you were instructed to return today.

"Do you recall when you were here last, your counsel was not present?

"A No, sir.

"Q Your counsel is present today?

"A Yes, sir.

"Q That's Mr. Chargel?

"A Yes, sir.

"Q And before we convened this afternoon, were you present when Mr. Merin of the Strike Force office gave -- showed the immunity order to your lawyer?

"A Yes, he showed it to him.

"Q Did you have a chance to have any discussion that was necessary with your attorney about the immunity order?

"A A very short brief discussion.

103 a



1 rm/lf

Marion

2 "Q Do you understand what your rights are?

3 "A Yes, sir.

4 "Q Okay. You understand that you can't  
5 invoke the Fifth Amendment privilege anymore?

6 "A Yes, sir.

7 "Q Mr. Marion, do you know a man by the name  
8 of James Vincent Tortora, also known as Poppo?

9 "A Yes, I do.

10 "Q When did you first meet Poppo?

11 "A Some years ago.

12 "Q Well, could you give us your best guess  
13 as to what year it was or how many years it was that you  
14 met Mr. Tortora for the first time?

15 "A I really can't remember the exact year.

16 "Q Did you meet him in New York?

17 "A No, I had met him in Las Vegas.

18 "Q Were you introduced to him by someone?

19 "A I'm trying to think. I met him in Las  
20 Vegas in one of the hotels. Somebody introduced me to him.  
21 I can't remember who introduced me to him.

22 "Q At the time you met him -- Mr. Tortora,  
23 that is, out in Las Vegas, were you running the beauty  
24 salon concession at Caesar's --

25 "A Yes, sir.

104 a

1       rm/lf                               Marion

2                       "Q       -- Palace?

3                       "A       Yes, sir.

4                       "Q       And how long have you had the concession

5       there?

6                       "A       Ever since it opened. I think it's 1966

7       or '67. I don't know the exact date.

8                       "Q       In other words, although you are not

9       sure what year it was you met Poppo, you can testify that

10       whenever it was that you met him, it was subsequent

11       to the time that you ran the concession at Caesar's Palace?

12                      "A       Yes, sir, I think it would be that.

13                      "Q       You don't recall who introduced you to

14       him?

15                      "A       I really don't, honestly.

16                      "Q       Let's see if we can help you.

17                               "Do you know Vincent Rizzo?

18                      "A       I know Vincent.

19                      "Q       Who have you known longer, Vincent Rizzo

20       or Poppo?

21                      "A       Poppo.

22                      "Q       Did Poppo have anything to do with intro-

23       ducing you to Rizzo?

24                      "A       Yes, he did.

25                      "Q       Who introduced you to Rizzo?

105. a



1 rm/lf Marion

2 "A Poppo.

3 "Q Where?

4 "A It was at a bar on Eighth Avenue.

5 "Q Avenue A?

6 "A Avenue A.

7 "Q Was it Vinny Rizzo's bar?

8 "A No, it was called Jimmy's Lounge.

9 "Q Were you ever told by anyone that Vinny  
10 ran that bar or that it was his?

11 "A No.

12 "Q How long ago was it that you met Rizzo?

13 "A God, I don't know. Could be two years,  
14 three years, I don't know the exact date.

15 "Q What were the circumstances under which  
16 Poppo introduced you to Rizzo?

17 "A He says, 'I want you to meet a friend of  
18 mine from Las Vegas.'

19 "Q He said that to you or to Rizzo?

20 "A To Rizzo.

21 "Q Did you ever have any business dealings  
22 with Poppo?

23 "A What kind of business dealings?

24 "Q Dealings where you asked him to do something  
25 for you where he asked you to do something for him. Were you

106 a

1 rm/lf Marlon

2 "ever engaged in any business transaction together?

3 "A Business?

4 "Q Business.

5 "A I don't know what kind of business you  
6 mean.

7 "Q Let me see if I can help you. What does  
8 the word 'business' mean to you?

9 "A Business is like a store; a bar, a beauty  
10 salon, a motel, a hotel.

11 "Q An undertaking taken by the individual  
12 for money?

13 "A I don't know what you mean.

14 "Q When someone engages in something for  
15 money, can we use that as a definition of business, the old  
16 colloquial expression, 'Nobody works for nothing.' Do you  
17 remember that?

18 "A Like if you would do something for me or  
19 I do something for him?

20 "Q Yes.

21 "A If that's what business means, yes.

22 "Q Did you ever ask him to do anything for  
23 you or did he ever ask you to do anything for him?

24 "A Yes.

25 "Q When was that?

107 a



1 rm/lf Marlon

2 "A Dates, I can't remember. I really don't  
3 know dates.

4 "Q Are we talking about five years ago, six  
5 years ago, three years ago, last month, yesterday?

6 "A Could be about three years ago.

7 "Q What was that?

8 "A Three or four years ago; I really don't  
9 know the dates exactly.

10 " He asked you to do something for him or  
11 he asked you to do something for you?

12 "A Can I see my attorney?

13 "Q Go ahead.

14 "A Mr. Foreman -

15 "Q Before you go out, just so we understand  
16 each other on the record -- sit down.

17 "You have a right to see your lawyer. And  
18 I want to make this very clear to you.

19 "Now, you have a right to see your lawyer  
20 with respect to certain things. For example, you have a  
21 right to see your lawyer if you don't understand what your  
22 legal rights are. Okay. Then we have already cleared up  
23 the fact that you understand what your legal rights are?

24 "A Yes, sir.

25 "Q You also have a right to see your lawyer if

108 R

1 rm/lf Marion

(62)

2 "A, a question is not clear to you, or if, B, you don't  
3 understand how that question is relevant to the investiga-  
4 tion this grand jury is conducting.

5 "You do not have a right to see your lawyer  
6 to ask him how to answer a question.

7 "A That's something else.

8 "C Just so you understand that.

9 "If at any time I ask you a question, so  
10 that we can save the grand jury's time, your time, your  
11 lawyer's time, if you don't understand the question, just  
12 tell me that and I'll try to rephrase the question and  
13 make it clear to you.

14 "Okay. Go ahead.

15 "A Thanks.

16 "MR. ARONWALD: Mr. Reporter, would you  
17 note the time. It's 2:12 p.m.

18 "(Witness left the Jury Room.)

19 "(Witness returned to Jury room.)

20 "MR. ARONWALD: Mr. Reporter, would you  
21 reflect that the time is now 2:17.

22 "BY MR. ARONWALD (Continued)

23 "Q All right, Mr. Marion, you have been out  
24 about 5 minutes. Have you had a chance to talk to your lawyer?

25 "A Yes, I did.

1092



1 rm/lf

Marion

(63)

2 "Q Do you remember what the question was that  
3 I asked you before?

4 "A Something about business.

5 "Q Well, when you went out to ask your lawyer  
6 about the question --

7 "A About the business, what kind of business  
8 had.

9 "Q No, I asked you --

10 "MR. ARONWALD: Well, just so we have  
11 no mistake about it, would you read back the last question,  
12 please?

13 "(The question was read.)

14 "Q That business transaction, was it something  
15 you asked him to do for you or was it something that he  
16 asked you to do for him?

17 "A I asked him to do for me.

18 "Q What was that?

19 "A What I asked him to do?

20 "Q Yes.

21 "A I think it was, mess up somebody's trans-  
22 missions on the trucks.

23 "Q What do you mean, 'mess up'?

24 "A Just so they wouldn't be in working order.

25 "Q Whose trucks?

110 a

1 rm/lf

Marion

2 "A Mr. Capazzo.

3 "Q Do you know Mr. Capazzo?

4 "A I know him, yes.

5 "Q And by the way, when you asked Mr. Tortora  
6 to do that, was that -- were you with Mr. Tortora at the  
7 time; was it person-to-person contact?

8 "A No, sir, it was on the telephone.

9 "Q Where were you; did you call him or he  
10 call you?

11 "A That I really can't remember, honestly  
12 I don't remember.

13 "Q Where were you when you had the telephone  
14 conversation: were you in New York, were you in Las Vegas?

15 "A I can't remember. I don't know where I  
16 was really.

17 "Q Mr. Marion, let me ask you a question.

18 "You just testified before the grand jury  
19 that you asked Mr. Tortora to mess up somebody's transmissions.  
20 Okay?

21 "A Yes, sir.

22 "Q Now, are you telling the grand jury that you  
23 cannot recall where you were when you made that request?

24 "A I really can't. I honestly and truly --

25 "Q Are you also telling the grand jury you can't



1 rm/lr Marion

2 "recall whether it was you that placed the phone call to  
3 him or he that placed the phone call to you?

4 "A I can't remember, sir. That was like  
5 three or four years ago. I really can't remember.

6 "Q Three or four years ago?

7 "A I don't know, I can't remember.

8 "Q Let me ask you this:

9 "Does the date February 8, 1972, refresh  
10 your recollection?

11 "A February 8, 1972?

12 "Q Yes.

13 "A (Nods.)

14 "Q Mr. Marion, you are aware, are you not,  
15 that the New York State authorities as well as the Federal  
16 authorities, wiretapped certain phones during the year  
17 1972, among those phones, your phone?

18 "A Yes, sir.

19 "Q Are you also aware that the government  
20 has turned over to you and your lawyer, all of the transcripts  
21 of the conversations that were intercepted and which you  
22 were a party?

23 "A Yes.

24 "Q You have had a chance to review those  
25 transcripts, haven't you?

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rm/lf

Marion

"A Yes, but I didn't read them that much.

"Q You didn't read them that much?

"A No, sir, I didn't.

"Q Well, supposing I told you that the date of the conversation you are referring to was February 8, 1972. Would that refresh your recollection?

"A If you told me so, then I'll believe that it's so.

"Q Now, we're talking about less than -- we're talking about just two years ago. Okay?

"A Yes, sir.

"Q And you are telling the grand jury that you can't recall whether you were in Las Vegas when you had this conversation or even whether or not you placed the call?

"A I'm serious. I can't. I really don't.

"Q Tell us, to the best of your recollection, what it was that you asked Mr. Tortora to do for you with respect to the Capazzo trucks.

"A I think I answered that question, sir.

"Q Well, I'm asking you to be a little more specific. Mess up transmissions?

"A That's what it was.

"Q Where -- you said you know Mr. Capazzo?

113 a





1 rm/lf Marion

2 "A Capazzo.

3 "Q In connection with what kind of a vote?

4 "A On an incinerator company that we were with.

5 "Q What's the name of that company?

6 "A Scientific Incineration Corporation.

7 "Q SID. Scientific --

8 "A Development, yes, sir.

9 "Q That was a company you became involved  
10 with while you were married to Connie Francis?

11 "A Yes, sir.

12 "Q Did you ever invest any money in SID?  
13 When I say you, I mean you, Isidore Marion, not you, you  
14 and Connie Francis. You as an individual.

15 "A Myself, no.

16 "Q Connie Francis did?

17 "A I think she invested a few dollars.

18 "Q You know that she invested; you know that  
19 her brother and father invested?

20 "A They invested.

21 "Q Franconero?

22 "A Yes, sir.

23 "Q What kind of a vote were you looking for  
24 from Mr. Capazzo in connection with this SID company?

25 "A Let's see if I can remember. It was favor-

115 a



1 rm/lf

Marion

2 "able to the way that I was thinking. I can't -- my mind  
3 can't get it.

4 "Q Let me explain something to you, Mr.  
5 Marion. I believe you. Don't assume by what I'm about to  
6 say to you that I'm in any way critical of you. I'm not  
7 being critical of you.

8 "A I understand.

9 "Q I want to explain a couple of things. I  
10 don't want you to get the impression, sir, that just by  
11 answering questions you are fulfilling your legal obligation

12 "In other words, even though you are  
13 answering questions, you are still subject to prosecution;  
14 for example, perjury, if you lie.

15 "A I understand.

16 "Q And in addition you can also be prose-  
17 cuted, as the order which you have seen says, for contempt.

18 "Now, your lawyer may have explained to  
19 you that by contempt, that means that you refuse to answer  
20 the questions.

21 "I want to explain to you that you can be  
22 prosecuted for contempt, not only for categorically refusing  
23 to answer a question, but you can be prosecuted for contempt  
24 by evasively answering the question.

25 "In other words, if your answers to a

116 ii

1 rm/lf

Marion

2 "question are so evasive as to be on their face the equivalent  
3 of a refusal to answer, you are still subject to prosecution  
4 for contempt.

5 "Now, when you tell the grand jury, sir,  
6 that you asked Mr. Tortora to damage or mess up the trans-  
7 missions of another man's trucks and you tell the grand  
8 jury that the reason you were doing that was because you  
9 were looking for a vote in connection with this SID company --

10 "A Yes, sir.

11 "Q -- I think the grand jury has a right, Mr.  
12 Marion, to expect you to be able to remember what that vote  
13 was in connection with, since it resulted in your taking  
14 rather, you know, positive action with respect to Mr.  
15 Tortora.

16 "You were asking Mr. Tortora to violate  
17 the law, you know that, don't you?

18 "A Yes, sir.

19 "Q What was the vote for?

20 "A Really and truly now, if I can answer  
21 you to what you just said to me, sir, if I can remember,  
22 I really will tell you.

23 "I'm not trying to be evasive or trying  
24 to get out of it. I'm really trying to remember.

25 "C Is it your testimony then, that you do

117 a



1 rm/lf Marion

2 "not, as you sit here, now remember --

3 "A At this moment --

4 "Q -- what it was?

5 "A At this moment, I don't remember what the  
6 vote was for. If you give me a minute or two to try to  
7 remember, I'll try to give you the answer.

8 "Q Let's come back to that question. We'll  
9 go on and come back to it.

10 "When you asked Mr. Tortora to do this,  
11 were you doing this on your own?

12 "A Yes, sir.

13 "Q Did you offer Mr. Tortora any money for  
14 it?

15 "A I think we said -- we, I -- I think I  
16 said, 'Don't do it for nothing.' Something like that.  
17 'There is a price,' or something. Something to that effect.

18 "Q In other words, are you telling the grand  
19 jury that you were doing this on your own initiative?  
20 Well, when you asked Mr. Tortora to do this, were you in  
21 effect representing someone else?

22 "A No, sir. This was for me.

23 "Q If the trucks had been damaged -- we'll  
24 get to whether they were in a minute or not. If the trucks  
25 had been damaged, and if Mr. Copazzo came back to you and

118 a

rm/lf

Marion

(72)

"said, 'Okay, I want \$3,000,' where would you have gotten the \$3,000 from? Is it your testimony you would have paid it out of your own pocket?

"A Yes, I would have.

"Q Were you an officer or director of SID?

"A No, I was not.

"Q You were a commission salesman?

"A A sales director.

"Q You were a commission salesman, weren't you?

"A Yes, sir.

"Q You were hired by Mike Riccardelli, the president of the company?

"A Yes, sir.

"Q Correct? And you were introduced to Mr. Riccardelli by George Franconero, Connie Francis' brother?

"A Yes, sir.

"Q What I'm asking you now, sir, is, are you telling the grand jury, had those trucks been damaged, you and Mr. Tortora --

"A They never done --

"Q Had the trucks been damaged and had you been presented with a bill by Mr. Tortora for the damage that was done to the trucks, it is your testimony that you would have paid that out of your own pocket?

117 a



1 rm/lf

Marion

(73)

2 "A Yes, sir.

3 "Q You weren't representing anyone?

4 "A No, sir. I made a statement that there  
5 is good people involved, just to impress Mr. Tortora that  
6 there was other people involved, but there really weren't.

7 "Q Were you trying to impress Mr. Tortora  
8 that there were other people involved?

9 "A So that he would do it.

10 "Q So he would do it?

11 "A Yes, sir.

12 "Q Well, do you recall seeing the transcript  
13 of that conversation that we're talking about? Isn't it  
14 a fact -- isn't it a fact that before you even said anything  
15 at all to Mr. Tortora about there being good people involved,  
16 that Mr. Tortora agreed to do the work for you?

17 "A Yes.

18 "Q Well, if he had already agreed to do the  
19 work for you, why was it necessary to impress him with the  
20 fact there were other people involved?

21 "A I just wanted to impress him.

22 "Q You wanted to impress him?

23 "A I wanted him to think that I was with  
24 somebody big. I don't know.

25 "Q Isn't it a fact, before you even mentioned

126 a

1 rm/lf Marlon

(74)

2 "that to Mr. Tortora, Mr. Tortora told you that for you  
3 he would do it for nothing?

4 "A Yes, sir.

5 "Q And didn't you say to him, 'Don't do it for  
6 nothing. There are good people involved here'?

7 "A To charge him for it. Yes.

8 "Q Let me ask you this question, Mr. Marlon.

9 "If you were asking Mr. Tortora to do this  
10 for you and Mr. Tortora told you he would do it for you  
11 for nothing, why were you telling Mr. Tortora not to do it  
12 for nothing, that there were good people involved here who  
13 would pay for it?

14 "A Because maybe I would ask him to give  
15 me some of the money to give back to me.

16 "Q You would ask Mr. Tortora to give you  
17 back some of the money, to give back to you; but it was your  
18 money in the first place?

19 "A That's why it would be cheaper.

20 "Q Why would it be cheaper. Mr. Tortora  
21 agreed to do it for you for nothing.

22 "A Sir, really that's the reason I'm just  
23 giving you the answer, that's what it was. I was just trying  
24 to impress him.

25 "Q Do you remember how many trucks were

121 R



rm/lf

Marion

(75)

"Involved?

"A No. I don't know how many trucks he has.

"Q Did you remember asking him -- do you remember him asking you how many trucks does Capazzo have?

"A To remember that conversation, sir, no, I don't. If you have the question, you can ask me. I'll remember if you say that's it.

"Q Do you remember telling Mr. -- I'm not telling you anything. I'm asking you. I'm asking you questions to see whether they refresh your recollection.

"Do you recall telling -- do you recall whether or not you told Mr. Capazzo or Mr. Tortora that Mr. Capazzo had seven or eight trucks?

"A I could have said that, sir. I don't remember. But I may have said it.

"Q Did you ever tell Mr. Capazzo that you yourself were not paying for the work that he was going to do?

"A Yes, I did say that.

"Q That was a lie?

"A Yes.

"Q Why?

"A I just didn't want him to think it was coming out of my pocket.

"Q But he already told you he would do it for

122 a

1 "you for nothing?

2 "A I know that.

3 "Q So in effect you wouldn't have had to  
4 pay him anything?

5 "A I'm not lying. This is the way I do  
6 it, this is the way I asked him to do it.

7 "Q Mr. Marion, let me explain something.

8 "Number one, your remarks directed towards  
9 me, please believe you -- you are misdirecting them.

10 "A You are talking to me, sir.

11 "Q It's not for me to determine whether I  
12 believe you or not. That's the grand jury's function.

13 "All I am here is the legal advisor to  
14 the grand jury. I'm asking you the questions to put certain  
15 evidence before them today.

16 "A Fine.

17 "Q I'm asking you, do you remember Mr.  
18 Capazzo asking you whether -- Mr. Tortora asking you whether  
19 you wanted anything done to Capazzo personally?

20 "A Yes, I do remember that.

21 "Q What did you tell him?

22 "A No.

23 "Q Do you remember telling Mr. Capazzo to  
24 mess up the transmissions of all of Capazzo's trucks?  
25

123 a



1 rm/lf Marion  
2 "A I don't know if I said all, or two, or three,  
3 or one.

4 "C Did you want all of his trucks damaged?

5 "A No.

6 "Q Well, did you tell Mr. Capazzo you wanted  
7 them all damaged?

8 "A Mr. Capazzo?

9 "C Mr. Tortora.

10 "A I can't remember, sir. Honest to God,  
11 I really don't remember. If you tell me what I said  
12 there, I'll agree with it. I don't know. I can't remember  
13 it.

14 "Q Mr. Marion, you just got through telling  
15 the grand jury you didn't want all of Capazzo's trucks  
16 damaged.

17 "If you didn't want all of Capazzo's  
18 trucks damaged, why would you have told Tortora that you  
19 wanted them all damaged?

20 "A If I said all of them, then all --

21 "Q You didn't want all of them damaged?

22 "A I feel at this moment, at that time I  
23 didn't want them all damaged. I can't remember.

24 "I don't know what's in my mind. I'm  
25 being honest with you. I have a block.

124 2

rm/lf

Marion

(78)

"Q Is this something you do every day. You ask people to damage other people's property?

"A Absolutely not.

"Q So in other words, it's something that should stand out in your mind, shouldn't it?

"A Can I explain it in my words? Can I explain to the grand jury?

"Q Sure, please do.

"A If I ask someone -- if I ask someone to do a hairdo, the next day I would forget about it. I don't know why; that's the way my mind is.

"Q Are you, Mr. Marion, trying to compare before this grand jury, doing a hairdo for someone to messing up someone's trucks?

"A No. I'm taking that out of context.

"Q It is -- you are a hairdresser by profession, aren't you?

"A Yes, sir.

"Q I think it's understandable, then, why you might forget the next day what you did to someone's hair the day before.

"If you're not in the business of damaging people's property, such as Mr. Capazzo's trucks, I think it's fair for the grand jury then to assume something

125 a



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rm/lf Marion

"should stick out in your memory.

"A I can loan somebody \$300 and the next day I'll forget about it. It will happen to me. It has happened to me.

"Honest, I swear on my kids, I'm not lying. I've loaned some guys 2, \$300, and I've forgotten about it.

"Q Mr. Marion, you remember on one occasion when Mr. Quatrone came out to Las Vegas and you loaned him some money?

"A Yes, sir.

"Q You remember about 3 or 4 or 5 months later, calling someone in Syracuse, asking them to get in touch with Quatrone because you loaned him this money and he hadn't repaid it?

"A Yes, sir.

"Q That was a loan that you had made that you didn't forget about?

"A That was not a friend. That was just an acquaintance.

"Q You loaned Mr. Quatrone some money because he was an acquaintance of yours?

"A Somebody asked me. He's a friend.

"Q Would you explain to this grand jury, Mr.

"Marlon, why you told Mr. Tortora that there were other people involved and therefore that Mr. Capazzo should charge you for the work that he was going to do?

"A I was trying to impress Poppo.

"Q With what?

"A Just impress that I knew people.

"Q What people?

"A Any kind of people. Just knew people. I just tried to impress him.

"Q What kind of a vote was it that you were looking for? Let's go back to that.

"A Okay. Can I have a minute or two to think?

"Q Sure.

"A I can't remember what the vote was about.

"Q You can't think about that?

"A I can't remember really. I'm really trying.

"Q Let's pass that to another question.

"You just got through telling this grand jury the reason you wanted these trucks damaged was you were trying to get a vote out of Capazzo?

"A Yes, sir.

"Q Let's forget what the vote was about.

"Had Capazzo indicated to you that he was not going to vote your way?

127 a



rm/lf

Marion

"A Yes, I think he did. Yes, sir.

"Q How did he tell you that; was that on the phone, in person?

"A I think it was in person.

"Q What did he say to you?

"A You asked me conversations three years ago.

"Q . I'm asking you the substance of a conversation that prompted you to call someone and ask him to mess up this man's trucks. That's what I'm asking. You're right. I'm asking you to remember a conversation that occurred two years ago.

"A Which is hard to remember.

"Q Let me ask you a question.

"Did you ask Poppo Tortora to put a card on the trucks, 'Courtesy of Isidore Marion,' after the trucks were damaged?

"A No.

"Q You didn't. Right.

"How was Mr. -- how did you figure that by damaging Capazzo's trucks, you were going to be able to get him to switch his vote to you if there would have been no way for him to associate the damage to the trucks with you?

"A To tell you the truth, I really don't know how I was going to do it."

128 a

MR. TAIKEFF: Your Honor, may we have that answer back again, please. I think there was one word misspoken.

THE COURT: Read it again.

MR. BORNSTEIN: "To tell you the truth, I really don't know how I was going to do it.

"Q To tell me the truth, Mr. Marion, isn't it a fact that you asked Poppo Tortora to do the damage on those trucks on behalf of Mike Riccardelli; isn't that the truth?

"A On behalf of who?

"Q Mike Riccardelli.

"A Absolutely not.

"Q Isn't it the fact that you asked Tortora to damage those trucks because Capazzo's signatures were necessary in order for any SID checks to be negotiated?

"A SID checks to be negotiated for what?

"Q For payment.

"In other words, wasn't Mr. Capazzo's signature one of the signatures required on any SID check?

"A I don't know about that.

"Q Isn't it a fact that you asked Tortora to do the damage to Capazzo's trucks because Mike Riccardelli had had problems with Capazzo in getting Capazzo to release monies to him; isn't that the truth? Isn't that the fact?



1 rm/lf

Marion

2 "A No, sir.

3 "Q And when you told Poppo Tortora on the  
4 telephone to charge you because they were good people  
5 involved, isn't it a fact that you were referring to Mike  
6 Riccardelli?

7 "A No, sir.

8 "Q You are positive of that?

9 "A I'm positive of that.

10 "Q And you are positive that you were not  
11 representing anyone else when you asked Tortora to do  
12 the damage to Capazzo's trucks?

13 "A I was representing myself.

14 "Q You were representing yourself?

15 "A Yes, sir.

16 "Q And although Capazzo -- although Tortora  
17 told you that he would do it for you for nothing, you told  
18 him, you insisted anyway that he charge you?

19 "A Yes, I did.

20 "Q And the reason, you said before this grand  
21 jury, was because you figured you would be able to get money  
22 back from Tortora on it, from Poppo?

23 "A Yes, sir.

24 "Q In other words, you were going to give  
25 him money so he could give you back some of your money?

130 a

rm/lf

Marion

(84)

"A Yes, sir. .

"Q That was done for what reason?

"A What do you mean, to give the money back?

"Q Well, let's take a hypothetical situation.

Let's assume --

"Q Just a minute. I don't know what that --  
and I'm being honest. I don't know what that word means.

"Q Let's suppose a set of facts. Okay.

"Suppose the Capazzo trucks were damaged.  
Suppose Tortora calls you and says to you, Vinny --  
Irzy, the job is done. You owe me \$5,000. Okay.

"You would give him \$5,000?

"A No, I wouldn't. I didn't have it. I  
would have paid him so much.

"Q You just got through telling him -- you  
wouldn't have paid him that much?

"A I said I wouldn't pay him all at once, is  
what I meant to say. I pay him piece by piece.

"Q Do you remember telling Tortora during that  
conversation, 'Whatever it costs, let me know'?

"A Yes, sir.

"Q Do you remember also telling him that,  
'It's all right, I ain't paying for it'?

"A Yes, sir.

131 a



1 rm/lf

Marion

( 85 )

2 "Q Do you also remember telling h'im, 'Be fair,  
3 because there's good people involved'?

4 "A Yes, sir.

5 "Q It is your testimony here that if Mr.  
6 Tortora had later called you and said, 'You owe me \$5,000,'  
7 you wouldn't have paid him?

8 "A Not then and there, I couldn't have. I  
9 didn't have the money.

10 "Q If you didn't have the money -- If you  
11 didn't have the money and you were tight for cash, why  
12 did you tell Tortora to charge you after he told you he  
13 would do it for you for nothing?

14 "A Because I would pay him in payments.

15 "Q You would pay him in payments?

16 "A Yes, sir.

17 "Q Then what would you do; you would expect  
18 him to kick back some of the money to you?

19 "A I would ask him to lift so much off it.

20 "Q Where would you have gotten the money to  
21 pay? Would you have had to borrow it?

22 "A If I had to, I would have borrowed it.

23 "Q You would have borrowed money to pay a  
24 man to do something when he told you he would do it for  
25 you for nothing?

132 a

1 rm/lf

Marion

2 "A I was trying to impress Poppo, because  
3 I thought he was a big guy in New York.

4 "Q You thought Poppo was a big guy in New  
5 York. Explain that to the grand jury.

6 "A I thought he was a big man.

7 "Q You thought he was a big organized crime  
8 guy, didn't you?

9 "A That's right. I thought he was a big man.

10 "Q You thought he was well connected with  
11 other organized crime people in New York?

12 "A Yes, sir.

13 "Q What organized crime people did you think  
14 that Poppo was connected with?

15 "A I don't know. I just thought he was big.

16 "Q You thought he was big?

17 "A Yes, sir.

18 "In other words, I wanted to be something  
19 that I wasn't.

20 "Q Which was that?

21 "A Trying to be a tough guy.

22 "Q Mr. Marion, let's go back to the conversa-  
23 tion you had with Tortora. You wanted to impress him that you  
24 were a tough guy? That's what you just said.

25 "A Yes, sir."

133 a



1 rm/lf

Marion

2 MR. BORNSTEIN: The testimony is now redacted  
3 ending on page 32 to the bottom of page 45.

4 THE COURT: Redacted means that the irrelevant  
5 part has been left out.

6 MR. BORNSTEIN:

7 "Q Mr. Marion, do you know a man by the name  
8 of James Quatrone?

9 "A Yes, I do. I know the name.

10 "Q Do you know another man by the name of  
11 Jack Dinero?

12 "A I know the name, not well. I was intro-  
13 duced to them.

14 "Q Do you know what Jack Dinero does for a  
15 living?

16 "A He's a policeman.

17 "Q Syracuse, New York?

18 "A Yes, sir.

19 "Q Do you know what Mr. Quatrone does for a  
20 living?

21 "A He's a policeman.

22 "Q Did you ever ask Mr. Dinero to do anything  
23 for you?

24 "A Yes, but I was just kidding around with  
25 him, what I asked him.

124 a

1 rm/lf Marlon

2 "Q What was it you asked Mr. Dinero to do  
3 for you when you were kidding around with him?

4 "A To get me a piece. I was --

5 "Q What do you mean when you say 'piece'?

6 "A A pistol.

7 "Q Did you ask him anything else? Did you  
8 tell him what kind of a pistol you wanted?

9 "A I can't remember if I did or didn't.

10 "Q You were kidding around with him?

11 "A Yes, sir. Really, I didn't mean it. I  
12 was just --

13 "Q You didn't mean it?

14 "A Y u know what I mean. I was just kidding  
15 around with the guy.

16 "Q You were kidding around with the guy?

17 "A I knew he was a policeman. I would ask a  
18 policeman to give me a gun?

19 "Q Let me ask you a question, Mr. Marlon.

20 "Let's get into that for a minute. Do  
21 you remember asking Mr. Quatrone for a particular type gun --  
22 Mr. Dinero, that is?

23 "A I may have, sir. I don't remember exactly  
24 what kind.

25 "Q Do you remember asking Mr. Dinero or

135 a



rm/lf

Marion

(89)

"telling Mr. Dinero that the gun had to be unregistered?

"A Yes, I think I did say that.

"Q Why did you want an unregistered gun?

"A It sounded good.

"Q What does an unregistered gun mean to you?  
You think that a gun is being unregistered; what does  
unregistered mean?

"A It's not registered.

"Q Not registered to anyone?

"A Not registered down at the station.

"Q Or anywhere. In other words, if the gun  
is ever used, it can never be traced; isn't that what an  
unregistered gun means?

"A Yes, sir.

"Q Why did you want an unregistered gun?

"A I really didn't want one. I was kidding  
with him.

"Q You really didn't want one.

"Mr. Marion, again I want to remind you,  
you are under oath.

"A Yes, sir.

"Q You are aware that telephone conversation  
was recorded pursuant to a court wiretap?

"A Did I know it was?

136 a

rm/lf

Marion

"Q Do you know now it was?

"A Yes, now I know it was.

"Q Now you know it was.

"Isn't it a fact that in return for this favor, you agreed to arrange for complimentary privileges for Mr. Quatrone at the Caesar's Palace?

"A For that favor?

"Q Yes.

"A All I know is, Mr. Dinero asked me if someone comes out there, would I take care of him. I said, yes, I would.

"Q The conversation that you had with Mr. Dinero, that conversation occurred while you were in New York; you were at the Delmonico Hotel, you just left Syracuse; isn't that correct?

"A If you say so, yes, sir.

"You asked me about conversations. I'm telling you I can't remember conversations.

"Q That conversation occurred March 16, 1972, so we're getting a little bit closer in point of time.

Still almost --

"A February, March. It's one month.

"Q It's still less than two years away. Let's not quibble about that.

137A



1 rm/lf

Marion

2 "You say you were kidding around?

3 "A I was kidding, to the effect that I wanted  
4 a gun. I mean, I asked him for a gun and in a kidding way.

5 "Q Well, if you were kidding around with him,  
6 why did you even go so far as saying it had to be unregistered  
7 or you weren't interested? A gun is a gun.

8 "A I don't know why I said that. I never  
9 got a gun.

10 "Q Oh, come on, Mr. Marion. You say you never  
11 got a gun.

12 "You know Mr. Quatrone was intercepted in  
13 Chicago en route to Las Vegas, and you know he was carrying  
14 a 25 caliber Berretta automatic; you know that, don't you?

15 "A Yes, sir, I know that.

16 "Q So you say you never got the gun. The  
17 reason was, the sky marshals in Chicago took the gun away  
18 from Mr. Quatrone; isn't that the truth?

19 "A Then it must be the truth.

20 "Q You know it's the truth. Didn't Mr.  
21 Quatrone ever tell you that?

22 "A Oh, when he came to Vegas, yes. He told  
23 he he got stopped in Chicago.

24 "Q By the way, when Mr. Quatrone came to Las  
25 Vegas, how did you and he get together? How did you know each

138

1 rm/lf Marion

(92)

2 "other?

3 "A I didn't know him and he didn't know me.  
4 It's just, I walked up to him. He looked Italian and I  
5 looked Italian.

6 "Q At the hotel?

7 "A Yes, sir.

8 "Q You walked up to him at the hotel?

9 "A No, no. At the airport. I'm sorry. At  
10 the airport.

11 "Q How did you happen to be at the airport?

12 "A I knew he was coming in.

13 "Q You knew he was coming in?

14 "A Yes.

15 "Q You were waiting at the airport for him?

16 "A To pick him up and his wife and bring  
17 them to Caesar's Palace.

18 "Q How long were you waiting?

19 "A They missed a flight, and he surrendered.  
20 He went aboard in Syracuse. He told them he had a gun.  
21 He showed them that he had the pistol.

22 "Q You say you were kidding around when you  
23 were talking to Dinero?

24 "A Half kidding, half serious.

25 "Q Let's get into the half serious then. With

139 a



4 "A I don't know why.

7 "A Yes, sir. I own a 22.

8 "G That's registered to you, isn't it?

9 "A Yes, it is. That's registered downtown.

10 "C Downtown meaning Las Vegas?

11 "A Yes, sir.

12 "Q What did you want the unregistered gun for

13 "A Just to have another pistol around the house

14 (Pause)

15 THE COURT: Why don't you begin back at the question  
16 on line 6.

17 MR. BORNSTEIN: Yes, sir.

18 "What did you want the unregistered gun for?"

19 "A Just to have another pistol around the  
20 house.

21 "Q Mr. Marion, a gun is a weapon that's used  
22 to kill people or used to kill things. You know that, don't  
23 you?

24	"A	Protection.
----	----	-------------

25 "Q It's a destructive weapon, correct?

1 rm/lf Marion

(94)

2 "A And to protect.

3 "Q Okay. You had a weapon, legally and  
4 lawfully, registered to you in the State of Nevada. And  
5 if you had to use that weapon to protect yourself, you  
6 would not, by possessing that weapon, be in violation of any  
7 law because the gun was registered to you, correct?

8 "A Yes, sir.

9 "Q Now, Mr. Marion, will you explain to the  
10 members of the grand jury what you want the unregistered  
11 gun for insofar as your own protection is concerned, when  
12 you had the right to have a firearm in your house, you  
13 know, legally? Now, if you were going to protect yourself,  
14 you could have used the weapon registered to you and not be  
15 in violation of any law. What did you want the unregistered  
16 gun for?

17 "A I wanted it and didn't want it. I wanted  
18 to see if he could get me a gun.

19 "Q Were you testing him to see how much con-  
20 tact he had?

21 "A I don't know -- he was a policeman. And I  
22 was asking him for a gun and I was -- wanted to see if  
23 he would come through with a gun.

24 "Q You had asked him to give something else on  
25 a previous occasion, hadn't you?

141A



1 rm/lf

Marion

(95)

2 "A Asked him to give me what?

3 "Q Mr. Marion, let me ask you this.

4 "Do you remember ever asking Mr. Dinero  
5 to get you a blackjack?

6 "A I really can't remember that. Honest to

7 "Q When you were married to Connie Francis,  
8 didn't Miss Francis perform one time up in Syracuse?

9 "A Yes, she did.

10 "Q You met Mr. Dinero up there at that time.  
11 Do you remember telling Mr. Dinero you wanted a blackjack  
12 so you could protect your wife from admirers who would come  
13 upon her after a performance?

14 "A I may have. I could have. Very easily.

15 "Q Did you ever ask Mr. Dinero to get you a  
16 pistol permit up in New York, Syracuse?

17 "A I could have, sir. I can't remember now.

18 "Q Let's get into the unregistered gun again

19 "You had asked Mr. Dinero these other two  
20 things, or you might have. Having owned a gun legally,  
21 what did you want an unregistered gun for?

22 "A I really don't know why. I just wanted  
23 one.

24 "C This occurred on March 16, 1972. That wa  
25 after you had had the conversation with Vincent Tortora abo

1412 a

1 rm/lf

Marion

2 "the restaurant guy in Brooklyn, and according to you --

3 "A The restaurant guy in Brooklyn?

4 "Q The restaurant guy. Which you say was the  
5 guy from California.

6 "Did you want the gun for that?

7 "A No, sir.

8 "Q No? Well, do you remember telling Mr.

9 Dinero that it was very important for you to have this gun  
10 and that the guy should be very careful when he was bringing  
11 it out to you because they might detect it, so he should  
12 put it in a suitcase? Did you tell Mr. Dinero, 'Have the  
13 guy put it in the suitcase, because they'll detect it if  
14 he carries it on him'?

15 "A Yes.

16 "Q Did you say that half jest or half seriously?

17 "A Could have been either way.

18 "Q Could have been either way?

19 "A Yes, sir.

20 "I wanted to be something. Just like I  
21 said, I wanted to impress them guys that I was something that  
22 I wasn't. That's all, and I'm not --

23 "Q Go ahead and finish your answer.

24 "A That was the answer.

25 "Q I don't think you finished, sir. I think you

143 a



1 rm/lf

Marlon

(97)

2 "were in midstream when I interrupted you. I'm sorry.

3 "Mr. Marlon, we've been in here an hour.  
4 There is considerably more we want to go into with you.  
5 Unfortunately, the grand jury has to recess early today.

6 "MR. ARONWALD: Mr. Foreman, would you  
7 direct the witness, Mr. Marlon, to return to this grand jury  
8 on January 3rd at 2:00 sharp.

9 "THE FOREMAN: January 3rd at 2:00 sharp.

10 "THE WITNESS: January 3rd?

11 "BY MR. ARONWALD:

12 "Q Mr. Marlon, I'm going to ask you to do  
13 something.

14 "A Yes, sir.

15 "Q You have seen the transcripts of these  
16 conversations that you were a party to. What I'm going  
17 to ask you to do -- your lawyer has them. I'm going to  
18 ask you to review those transcripts between now and January  
19 3rd.

20 "The grand jury is interested in having you  
21 appear before it because they want truthful testimony from  
22 you.

23 "Q And in order to save the grand jury's  
24 time and in order to make things a lot easier for you and  
25 for everybody else, I think it would be a good idea if you,

*144 a*

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rm/lf Marion

(98)

"between now and January 3rd, reviewed these transcripts with a view towards refreshing your recollection --

"A Okay.

"Q -- as to what the conversations were that you had with people.

"Now, in particular, Mr. Marion, there are several things this grand jury is going to be interested in. A few of them, we've discussed today. But the grand jury has not exhausted its questions that it has for you with respect to the matters we have inquired about on January 3rd.

"So please --

"A You want me to read all of the transcripts?

"Q Mr. Marion, I think you have a fair idea as to what the grand jury is looking into.

"All I'm doing is offering a suggestion to you because since you have been here you have on several occasions indicated an inability to recall certain things.

"And I am advising you, recommending to you that you review these transcripts and give very serious thought to the circumstances under which you had these conversations in which you either were asking someone else or were being asked by someone to commit a criminal act.

"You understand that?

145 a



1 rr/lc Marion

2 "A Yes.

3 "Q And you are free to leave and we'll see  
4 you here on January 3rd at 2:00 p.m.

5 "A Thank you.

6 "(Witness was excused.)

7 "(Time noted: 3:05 p.m.)

8 MR. BORNSTEIN: Your Honor, I think there is an  
9 apparent typo which may be somewhat confusing, end of  
10 page 56, line 23, where there is a date of January 3rd, and  
11 that would apparently be a typo --

12 MR. TAIKEFF: I assume the government means to  
13 indicate that his appearance on January 8th was the correct  
14 date and he did not fail to make any appearances that was  
15 required of him.

16 MR. BORNSTEIN: There was no appearance, no testi-  
17 mony, nothing occurred on January 3rd.

18 MR. TAIKEFF: We will stipulate to that, your  
19 Honor.

20 THE COURT: All right.

21 MR. BORNSTEIN: I direct your attention to the  
22 transcript for January 8, 1974 --

23 THE COURT: Before you do that, are you going to  
24 have another witness this afternoon?

25 MR. BORNSTEIN: No, your Honor.

146 a

1 rm/lf

Marion

(100)

2 THE COURT: You are just going to read this trans-  
3 cript?

4 MR. BORNSTEIN: Yes, your Honor.

5 THE COURT: We will take a ten-minute recess now.  
6 (Recess)

7 MR. BORNSTEIN: May I proceed, your Honor?

8 THE COURT: Please.

9 MR. BORNSTEIN: I direct your attention to the  
10 testimony of January 8, 1974, Mr. Abzug.

11 "ISADORE J. MARION, recalled as  
12 a witness by the Grand Jury, having been previously  
13 duly sworn by the Foreman, testified as follows:

14 "THE FOREMAN: You are still under oath.

15 "EXAMINATION BY MR. ARONWALD:

16 "Q Mr. Marion, you were last here on December  
17 20th and you are back today. That's a period of approximately  
18 two weeks, I guess.

19 "Do you have anything that you have  
20 reflected upon since you were last here which you wish to  
21 bring to the grand jury's attention?

22 "Any testimony which you gave in the last  
23 time which you want to correct today, or anything that you  
24 want to bring to the Grand Jury's attention which you were  
25 unable to recall when you were last here?

147 A



1 rm/lf

Marion

(101)

2 "A I can't remember, but I brought the  
3 transcripts here because I really do have a bad memory and  
4 I would like to refresh my recollection if it's all right  
5 with you.

6 "C You have nothing you want to bring to the  
7 attention of the grand jury?

8 "A Reflected -- excuse me?

9 "Q Thought about?

10 "A I can't remember anything.

11 "Q When you left here the last time since  
12 you were here last, have you thought about your grand jury  
13 appearance last time, have you thought about your testimony  
14 here?

15 "A The questions, I was concentrating on this  
16 (indicating).

17 "C Have you thought about your testimony,  
18 have you thought about testimony, questions as well as  
19 answers?"

20 MR. TAIKEFF: Your Honor, I would ask  
21 that the jury be told that that indicating is part of a  
22 designation in the record which apparently shows that where  
23 Mr. Marion said, "The question I was concentrating on," that  
24 the witness is pointing to something.

25 THE COURT: Yes, I think he is indicating what he

14/8 ca

1 rm/lf Marion

(102)

2 means by "this."

3 MR. BORNSTEIN:

4 " Have you thought about your testimony,  
5 have you thought about your testimony, questions as well  
6 as answers?

7 "A Yes, I thought of them.

8 "Q There is nothing that you thought about  
9 after you left here the last time, which you now believe  
10 was incorrect testimony which you want to correct today?

11 "A If there is, I don't know right now at  
12 the moment."

13 Let the record reflect there is a redaction  
14 to page 4, line 12.

15 "Q How many times have you asked anyone to  
16 damage someone's trucks?

17 "A How many times?

18 "Q How many separate occasions have you asked  
19 someone to damage another individual's trucks?

20 "A Are you speaking specifically of Capasso?

21 "C-a-p-a-s-s-o, Truck.

22 "Was that the only time that you ever asked  
23 anyone to damage someone's trucks?

24 "A Yes, sir.

25 "Q That was --

149 a



1 rm/lf

Marion

2 "A Yes, sir.

3 "Q Let's go a little bit, if we can into  
4 Mr. Capasso.

5 "A Yes, sir.

6 "Q What's his first name?

7 "A Frank.

8 "Q Do you know him personally?

9 "A Yes, I do.

10 "Q How long have you known him?

11 "A I would have to relay it back when I got  
12 married to Connie.

13 "Q By 'Connie,' you mean Connie Francis?

14 "A To tell the truth, I forgot the date I  
15 married her.

16 "To tell you the truth, I don't remember  
17 the year.

18 "Q Let's see if we can help you a little bit.

19 "Did you meet him before or after you  
20 married Miss Francis?

21 "A After.

22 "Q How long after you married Miss Francis  
23 did you, for the first time, meet Mr. Capasso?

24 "A Approximately, that's tough. It could  
25 be four months, five months, six months. I don't know the

150 a

1 rm/lf Marion

( 104 )

2 "exact -- I'm giving an approximate date.

3 "Q Who was it that introduced you to Mr.  
4 Capasso?

5 "A I really don't know.

6 "Q Was it Miss Francis?

7 "A No.

8 "Q Was it her brother, George Franconero,  
9 F-r-a-n-c-o-n-e-r-o?

10 "A Could have been.

11 "Q Could it have been Mr. Riccardelli?

12 "A It could have been him also.

13 "Q Did you have occasion to socialize with  
14 Mr. Capasso?

15 "A Yes, sir.

16 "Q Did you come to know him well?

17 "A Yes, sir.

18 "Q Was your relationship with him more than  
19 just a business relationship?

20 "A You mean was it friendly?

21 "Q Yes.

22 "A Yes.

23 "Q Now, you were a commissioned salesman for  
24 Scientific Incineration Divisions; right?

25 "A Yes, sir.

151 a



1           rm/lf                               Marion

2                               "Q           For brevity sake, we will refer to it as

3           SID.

4                               "Did Mr. Capasso have any relationship

5           with SID, to your knowledge?

6                               "A           Yes, sir.

7                               "Q           What was his relationship?

8                               "A           He was an investor.

9                               "           Was he also an officer or director of the

10           corporation?

11                               "Q           What I read in here that at one time he

12           was and one time he wasn't.

13                               "           When you say 'here,' what are you

14           referring to?

15                               "A           The transcript.

16                               "Q           The wiretap transcript?

17                               "A           Yes, sir.

18                               "Q           Putting those aside, do you, of your

19           own knowledge, know if Mr. Capasso was an officer or director

20           of SID?

21                               "A           Yes, he was.

22                               "Q           Did you ever have any arguments with him

23           with respect to your relationship with SID?

24                               "A           No, I don't think I did.

25                               "           Did you ever have any arguments with him

152 a

rm/lf Marion

"at all about anything?

"A No, sir. I don't think I did.

"Q Now, who was it -- let me withdraw that.

"When you became a commissioned salesman for SID, did you enter into a written contract with him, an employment type contract?

"A Yes, I did.

"Q Who drew up that contract?

"A I don't know if it was drawn up. I think it was an attorney in New York.

"Q Do you remember his name?

"A Yes, sir. Mr. Murray -- I can't think of his last name.

"Q Now, he drew up that contract on your behalf, or was he representing SID?

"Q On my behalf. I got him through Miss Connie Francis.

"Q Who did you negotiate your contract with, who negotiated the terms of the contract?

"A (No response.)

"Q You just didn't walk into Mr. Murray's office, if that be his name, and say, 'I am going to be a salesman of the company,' and say, 'draw me up a contract'?

"A Mr. Riccardelli, I and Mr. Franconero --

153 a



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rm/lf

Marion

"I think it was put before the board of directors.

"Q And you know that Mr. Capasso was a member of the board of directors of SID; don't you?

"A Yes, sir.

"Q Now, did you ever have any discussion with Mr. Riccardelli about the reaction of the board of directors to your contract with SID?

"A You mean to see if it was favorable?

"Q Yes.

"What did he tell you?

"A I don't remember.

"Q Did he ever tell you that Mr. Capasso disapproved of the contract as it was initially drawn?

"A What was that?

"Q Did Mr. Riccardelli ever tell you that when the contract was proposed, was presented to the board of directors, that Mr. Frank Capasso expressed disapproval about the terms of the contract and that Mr. Capasso insisted that that contract be modified?

"A Yes, I think so."

Let the record reflect that the transcript has been deleted from this point to page 20, line 9.

"Q Did Popo, P-o-p-o, Totoro loan you any money?

154A

1 rm/lf Marion

2 "A No, sir.

3 "Q Did Frank Capasso ever loan you any  
4 money?

5 "A Yes, sir, he did.

6 "Q How much did he loan you?

7 "A \$500.

8 "Q Where did that loan take place?

9 "A I don't know; I can't remember the date.

10 "It was when I was living in New Jersey.

11 "Q Now, did you sign any IOU or anything for  
12 that money?

13 "A Yes, I did.

14 "Q Did you ever repay it?

15 "A Yes, sir.

16 "Q All of it?

17 "A Yes, sir.

18 "Q Do you recall how long the loan was for?

19 "A No, I can't remember.

20 "Q Well, going over those transcripts that you  
21 have there, while you were staying in the hotel in New  
22 York, the DelMonico Hotel, do you recall a conversation  
23 that you had with your sister, Josie Alexander where you  
24 told her to mail a check to Mr. Capasso?

25 "A I read that here, yes, sir.

155 a



1 rm/lr

Marion

2 "Q Was that check repayment for this loan?

3 "A Yes, sir.

4 "Q Was that full payment for the loan?

5 "A Yes, sir.

6 "Q That one check?

7 "A I don't know if I paid him some money  
8 before. I don't know how much he loaned me, \$500 or \$600.9 "Q That conversation that you had with your  
10 sister --11 "Will you look at the transcript and tell  
12 us on what date that conversation took place?13 "That transcript is not in evidence. You  
14 may look at that transcript to refresh your recollection  
15 and see if it refreshes your recollection as to what  
16 date you had that conversation?17 "A Do I have it there (indicating), Mr.  
18 Aronwald?"19 The record indicates "indicating" when  
20 the witness said "there" referring to something.

21 "Q Let's put it this way.

22 "Would you agree with me, Mr. Marion,  
23 that you were in New York and staying at the Delmonico  
24 Hotel in March of 1973 -- on or about March 13, 1972?

25 "A You asked if I would believe you? Yes, sir.

156 a

1 rm/lf

Marion

2 "Q Does that refresh your recollection  
3 as to when you were in the hotel?

4 "A Yes, sir.

5 "Q And it was while you were staying at  
6 the Delmonico Hotel in New York that you had the conversation  
7 with your sister?

8 "A It could have been. I'm trying to find  
9 it.

10 "Q You said you found the transcript before  
11 and you read it before you came to the grand jury?

12 "A I want to find it to see the exact date.

13 "Q As long as we can establish that you were  
14 in New York at the Del Monico Hotel on or about March 13,  
15 1972.

16 "If it is your testimony that you made  
17 the call to your sister, or had that telephone conversation  
18 with her while you were staying at the Del Monico Hotel,  
19 then it is obvious that the conversation you had with her  
20 had to be on or about March 13, 1972.

21 "A Fine.

22 "Q Now, we have already established that the  
23 conversation that you had with Totora about your wanting  
24 him to damage Mr. Capasso's trucks occurred on February 8,  
25 1972.

157 a



rm/lf

Marion

"Do you recall that?

"A I don't know the date. But I think it is right here (indicating)."

The record reflects indicating when the witness said "here."

"A Yes, sir, February 8th.

"Q Now, therefore it is obvious also that your conversation with Mr. Totoro occurred before you had the telephone conversation with your sister where you told her to mail a check to Mr. Capasso?

"A It could have happened. Yes, sir.

"Q Well, it had to have happened; that was February and the other was March. Since March comes after February, the conversation with your sister had to have happened after the conversation with Mr. Totoro?

"A Yes, sir.

"Q Isn't it a fact, Mr. Marion, that your loan of \$500 that you had borrowed from Mr. Capasso -- isn't it true that in connection with that loan you signed a promissory note to Mr. Capasso; right?

"A Yes, sir. I did.

"Q And isn't it true that you agreed by the terms of that promissory note to pay him back the \$500 on February 6, 1972?

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rm/lf

Marion

(112)

"A It could have been; I can't remember, it could have been.

"Yes, sir.

"Q Now, Mr. Marion, was there any relationship to your being unable to pay the \$500 to Mr. Capasso on February 6, 1972, and your conversation with Mr. Totoro on February 8, 1972, where you asked him to damage Mr. Capasso's trucks?

"Was there any relationship between those two events?

"A What do you mean?

"Q Did you ask Mr. Capasso -- Mr. Totoro to damage Capasso's trucks because of the note that you had signed agreeing to pay \$500 back to Mr. Capasso on February 6, 1972?

"A No, because of the money, no.

"Q In other words, that loan had nothing whatsoever to do with your asking Totoro to damage Capasso's trucks?

"A No.

"Q You are sure of that?

"A Well certainly you mean like I didn't want to pay him back?

"Q Was there any relationship whatsoever between

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rm/lf Marion

"the two events?

"If there is a relationship according to your testimony then we will find out what it is; right?

"Now, I want to know whether or not your asking Totora to damage Capasso's trucks in any way grew out of the promissory note you had signed?

"A No, sir.

"Q You are certain of that?

"A No, sir. Positive.

"You must forgive me because I really don't understand a lot of words.

"Q As I explained to you last time --

"A I'm not trying to be a funny guy. A lot of this I don't understand, I really don't.

"Q As I explained to you the last time, if for any reason any questions that I put to you or the grand jurors, if you let me know that, we will try to clarify the question.

"A Yes.

"Q Oh, just for the record, your lawyer is present today?

"A Yes, sir.

"Q You have the right to consult with him, as I explained the last time.

160 a

rm/ll'

Marion

(114)

"A Yes, sir.

"Q Mr. Marion, why was it that you asked Vincent Totoro to damage Capasso's trucks?

"A I tried -- I tried to remember, but I think it was I'm trying to get a vote on him and I can't remember what the vote was for.

"Q Were you going to benefit in any way by the vote?

"Q Yes, sir, I may have.

"Q In what way would you benefit in the vote?

"A I can't remember what the vote was for.

"Q Now, Mr. Marion, we have already established by your testimony that this was the first time and the only time that you ever asked anyone to damage someone else's trucks; correct?

"A Yes, sir.

"Q Is it your testimony, sir, that your asking Totoro to damage Capasso's trucks was something that is so insignificant to you that you are unable to recall the whys and wherefores for that request?

"Is that what you are telling the grand jury?

"A Yes, sir. I really can't remember it.

"Q Certainly, Mr. Marion, you would agree, would you not, that your request to Mr. Capasso, or your con-

161 a



rm/lf

Marion

( 115 )

"versation with him about the damage to these trucks was something that was not said in jest?

"A To Mr. Capasso?

"Q To Mr. Totoro. You wanted him to damage Capasso's trucks?

"A Yes and no, because I liked him.

"Q You liked him?

"A And I still do.

"Q You still do?

"A And we never damaged the trucks.

"I told Totoro not to.

" When?

"A A few days later, five days later. I don't remember when.

"Q Was that on the telephone?

"A No, that was in person.

"Q Was that in New York?

"A I don't remember where it was.

"Q Was that the time that you were out at the Del Monico Hotel?

"A It could be. I can't remember, sir.

"Q Let me ask you this question.

"You are testifying that you instructed Mr. Totoro to forget about it?

162a

rm/lf

Marion

( 116 )

"A Yes, sir.

"Q When and where did you tell him to forget about it?

"A Oh, oh, it could have been at the Del Monico.

"Q That was in March of 1972, that was around March 13th that you were there. Your conversation with Totoro was February 8th, that's over a month later, all right?

"A Yes, sir.

"Q Now, did you read the transcript of the conversation between you and Totoro?

"A Yes, I did.

"Q Before you came into the grand jury today?

"A Yes, sir.

"Q Isn't it a fact that in that conversation Totoro told you he was going to be in New Jersey to meet with some people and he would ask them to do the job?

"A Yes, sir.

"Q Is it your testimony that while you were -- Is it your testimony that when you were in New York at the Del Monico Hotel a month later you told Totoro to forget about it?

"A It could have been then.

"Q Well, you said it was in person?

163 a



1 rm/lr

Marlon

2 "A All I remember is I said I can't remember  
3 when it was.

4 "Q If it wasn't in New York, where was it?

5 "A It could have been on the telephone. I  
6 can't remember. I'm trying to help you.

7 "I'm trying to get it out of my mind. It  
8 is not there, please believe me.

9 "Q Was this something so insignificant that  
10 of the why's and wherefores that you can't recall it?

11 "A After I asked him not to do it and please  
12 don't do it, it leaves my mind.

13 "I can't give you the same example because  
14 you laugh like if I do a hairdo, after I am finished, I  
15 forget it.

16 "Q You analogized somebody's property and a  
17 hairdo.

18 "A I don't have your education. I can't  
19 exemplize like you do" --

20 MR. TAIKEFF: Objection. That was not read  
21 correctly, your Honor.

22 THE COURT: Reread the answer.

23 MR. BORNSTEIN:

24 "A I don't have your education. I can't  
25 exemplize like you say between one and another. I am trying

164 a

rm/lf

Marion

(118)

"to explain to you how I forget things.

"Q Mr. Marion, let me ask you this.

"Is it your testimony that your best recollection is that your asking Totora to damage Capasso's trucks related to a vote, that you wanted Mr. Capasso to vote a certain way?

"A Yes, sir.

"Q Had you been told by Mr. Capasso that he was not going to vote that way?

"A I think the discussion was that he was going to vote another way.

"Q With whom did you have that discussion?

"A (No response.)

"Q Was it with Capasso, Franconero?

"A It could have been with Mr. Capasso. Mr. Franconero, Mr. Riccardelli. Whoever was present at the board meeting. It could have been with all of them.

"Q In other words, it is your testimony now that clearly you learned of the fact that he was not going to vote the way you wanted while you were present at the board meeting?

"A He was going to vote one way, but he voted with us, the way that we wanted it. Not like wanted it, but the way we wanted the vote to go and that's one of the reasons

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Marion

"why we didn't damage the rucks.

"Q Who is we?

"A We, me and Totora.

"Q Totora had no interest in SID's business, did he?

"A No, his trucks. The way we voted, we didn't want Totora to damage the trucks anymore.

"Q Who was we?

"A The board of directors. There is always certain people that vote one way and some the other way.

"Q Who is we?

"A George Franconero, who was my brother-in-law at the time, Mr. Riccardelli, I can't remember the names on the board.

"Q Had you discussed with Riccardelli and Franconero what you asked Totora to do for you?

"A No.

"Q You just got through saying that we no longer wanted Totora to damage the trucks.

"Who is we, who is the we?

"A Let me say me instead of we. It is a figure of speech, the way you talk sometimes you say we and you mean me.

"Have you ever done that? I'm not trying

166 a

1 rm/lf

Marion

( 120 )

2 "to be funny."

3 Let the record reflect a deletion, page  
4 33 through page 43, line 22.

5 "Q Mr. Marion, the last time you were here  
6 you testified that with respect to Quatrone, Q-u-a-t-r-o-n-e,  
7 that you had had a conversation with Jack Dinero, D-i-n-e-r-o,  
8 during which you discussed with Quatrone bringing to you  
9 in Las Vegas" --

10 Your Honor, may I indicate that the  
11 practice of spelling is undoubtedly for the grand jury  
12 reporter?

13 MR. TAIKEFF: No objection, your Honor.

14 THE COURT: Yes.

15 MR. BORNSTEIN:

16 "Q Mr. Marion, the last time you were here  
17 you testified that with respect to Quatrone, that you had  
18 had a conversation with Jack Dinero which you discussed with  
19 Quatrone bringing to you in Las Vegas an unregistered gun?

20 "A Yes, sir.

21 "Q Now, in one point in your testimony you  
22 said you were kidding around in that conversation --  
23 withdrawn.

24 "Do you recall when you were here last  
25 testifying, before the grand jury that you said you were

167 a



1 rm/lf Marlon

2 "kidding around?

3 "A I said half serious and half kidding,  
4 yes, sir.

5 "Q Do you remember first testifying before  
6 the grand jury that it was all a joke?

7 "A I said I was half serious and half kidding.

8 "Q Do you remember the last time you were  
9 here being asked this question and having given this answer?

10 "Q Why did you want an unregistered  
11 gun?

12 "A I really didn't want one; I was  
13 kidding with him.

14 "Do you remember giving that testimony the  
15 last time you were here?

16 "A Yes, sir.

17 " And then later on being asked this question  
18 and having given this answer?

19 "Q You say you were kidding around  
20 when you were talking to Dinero?

21 "A Half kidding, half serious."

22 "Do you remember that?

23 "A Yes, sir."

24 Your Honor, in view of the question, may  
25 I ask at that time that Mr. Aronwald was reading the question?

rm/lf

Marion

(122)

to the witness at that time?

THE COURT: Yes.

MR. BORNSTEIN:

"Q Now, Mr. Marion, when you had the conversation with Mr. Dinero about the unregistered gun --

"A Yes, sir.

"Q -- were you kidding around with him or were you serious?

"A Half and half.

"Q Would you explain to the grand jury how you were half serious and half kidding when you were talking about your receiving an unregistered firearm?

"A If you can get the gun to me, fine. If you can't, you can't.

"Q That means you were serious if he was able to get you an unregistered gun, you wanted it?

"A It was a kidding way.

"If he could get me the gun, fine.

"Q Have you read the transcript of your conversation with Mr. Dinero where you discussed that gun?

"A If I can find it here (indicating)."

The witness then indicating with the word "here."

"Q Well, take a look for it."

169a



1 rm/lf

Marion

( 123 )

2

The record reflects the witness complies.

3

"Q Can't you find it?

4

"A No, sir. If someone could help me, I  
5 am trying to get --

6

"MR. ARONWALD; May I have this marked  
7 as Grand Jury Exhibit 1, today's date, please?

8

"(Document marked Grand Jury Exhibit 1,  
9 as of this date.)

10

"Q Mr. Marion, is that a copy of the transcr  
11 to which you have just been looking for?

12

"A (No response.)

13

"Q That is the conversation we were referring  
14 to before between you and Mr. Dinero?

15

"A I never saw this one.

16

"Q That is the transcript of the conversation  
17 that you are referring to with Mr. Dinero where you say  
18 you were half serious and half kidding; is that correct?

19

"A It must have been. Let me look at it  
20 first.

21

"Q That's the conversation; isn't it?

22

"A I'm trying to read really fast for you to  
23 give you an answer.

24

"Q How many conversations did you have with M  
25 Dinero on the telephone where you talked about unregistered

1 rm/lf

Marlon

(124)

2 "A Probably one.

3 "Q Does that refresh your recollection that  
4 that is the transcript? Does that refresh your recollection  
5 that that is the conversation that you had with him about  
6 Quatrone's bringing to you in Las Vegas an unregistered  
7 gun?

8 "A Yes, sir.

9 "Q I want you to look at this and I want  
10 you to find any part on that which you say it was obvious  
11 that you were kidding around?

12 "A On paper it don't look like you're kidding,  
13 but the sound of your voice can be different.

14 "Q Is it your testimony that it would be clear  
15 from anyone listening to the conversation that you were  
16 kidding around?

17 "A What do you mean?

18 "Q Were you laughing during this conversation  
19 with him talking about the gun?

20 "A No, sir.

21 "Q Was there any part of the conversation  
22 where you told him if the guy can't get me the gun, I  
23 really don't need it?

24 "A No, sir.

25 "Q In fact, you not only told him -- do you

171 a



1 rm/lf

Marion

2 "recall Mr. Dinero saying to you my closest friend went  
3 to Buffalo and he is trying to pick that up for you and if  
4 you remember him, then saying to you -- strike that.

5 "Do you remember Mr. Dinero saying to  
6 you, "My closest friend went to Buffalo, now he is going to  
7 try to pick up for you," and do you then remember Mr.  
8 Dinero saying to you if he can't make it Iz, he is doing  
9 his best, he is there now, he left this afternoon.

10 "Do you remember that conversation?

11 "A I remember it because I hear it. Yes,  
12 sir.

13 "Q Do you remember then saying to Mr.  
14 Dinero, "I understand it is an u registered one, though"?

15 "A Yes, sir.

16 "Q And do you remember Mr. Dinero then saying  
17 to you that Mr. Quatrone would deliver it to you personally?

18 "A Yes, sir.

19 "Q Now, up to this point you were serious  
20 when you were talking about the unregistered gun; is that  
21 correct?

22 "A Yes, sir.

23 "Q And then, Mr. Marion, do you remember --  
24 withdrawn.

25 "Is it your testimony that you really didn't

172 a

rm/lf

Marion

"care whether or not Mr. Quatrone could deliver the gun to you; if he could, fine, if he could not, fine?

"A I think I felt that way, yes.

"Q Would you explain -- do you recall this part of the conversation?

"Do you remember telling Mr. Dinero to instruct Mr. Quatrone as follows: 'Don't tell him to put it in his coat, or they will detect it, put it in his suitcase,' do you remember that part?

"A Yes, I do.

"Q Now, you were referring to the sky marshals then, weren't you?

"A Yes, sir.

"Q You were referring to the fact that if a man went aboard an aircraft, it might be detected by the anti-hijacking people?

"A Yes, sir.

"Q If you were half serious and half kidding, if it didn't make any difference to you if you got the gun or didn't, why did you then tell Dinero to tell Quatrone not to carry the gun on his person, but that he should put it in his suitcase?

"A Yes, sir.

"Q Will you explain that?

173 a



1 rm/lf

Marion

2 "A Why? So it wouldn't get detected.

3 "Q Because you wanted the gun?

4 "A Yes, sir.

5 "Q What were you going to do with this unregi  
6 tered gun?

7 "A Well, in Vegas you can sell an unregistered  
8 gun for a lot of money.

9 "Q To who?

10 "A To anybody. There is a big market in Vega  
11 for unregistered guns.

12 "Q Isn't it a fact that it is fairly simple  
13 for someone to purchase a gun in Las Vegas?

14 "A Yes, sir.

15 "Q All you have to do is be a resident of Veg  
16 for a short period of time?

17 "A Yes, sir.

18 "Q And walk into the sheriff for an authoriza  
19 tion to buy a gun?

20 "A Yes, sir.

21 "Q And you register the gun with the sheriff?

22 "A Yes, sir.

23 "Q Now, Mr. Marion, you yourself have a  
24 registered gun, don't you?

25 "A Yes, sir.

174 a

1 rm/lf

Marion

( 128 )

2 " Your testimony is that you wanted this  
3 gun so that you could sell it?

4 "A Yes, sir.

5 "Q You are clear on that?

6 "A Yes, sir.

7 "Q There is no doubt in your mind about that?

8 "A No doubt.

9 "Q You weren't going to keep it for yourself?

10 "A No, sir.

11 "Q You weren't going to use it for yourself?

12 "A No, sir.

13 "Q Well, Mr. Marion, did you have anyone in  
14 mind particularly as to who you were going to sell this gun  
15 to?

16 "A No, sir.

17 "Q Are you sure of that?

18 "A Yes, sir.

19 "Q When you said before that it is very easy  
20 to sell an unregistered gun in Vegas, do you mean that there  
21 are people that would not otherwise be permitted to buy  
22 a gun lawfully, that there are the type of people that  
23 you are referring to that you were going to sell the gun to?

24 "A In Vegas, there is always a lot of different  
25 types of people in Vegas. I think it was one of the highest

1752



1 rm/lf Marion

2 "places for robberies in the world.

3 "Q Who were you going to sell the gun to,  
4 the robber or the robbee?

5 "A Whoever would ask.

6 "Q To the victim or the robber?

7 "A As long as the money was right, anyone.

8 "Q How much were you going to ask for the  
9 gun?

10 "A I am sorry; you are making me laugh.

11 "Whoever would ask for the gun.

12 "Q Were you going to walk around with a sign  
13 on your chest saying, 'I have an unregistered gun, sold  
14 to the highest bidder'?

15 "A Certainly not.

16 "Q How would someone come to Izzie Marion to  
17 buy an unregistered gun?

18 "A I don't know, it's like anything else.

19 "Q Mr. Marion, it is now 3:20; is there any-  
20 thing else you want to say to the grand jury?

21 "A I am sorry if I offended anybody here and  
22 took their time up.

23 "Q There is no testimony you want to change  
24 on something as you sit that you can recall that was incorrec  
25 about your testimony?

176 a

1 rm/lf

Marlon

2 "A Not that I can recall, right now.

3 "MR. ARONWALD: Mr. Marlon, I have no  
4 further questions for you.

5 "Thank you very much.

6 "THE WITNESS: Am I excused?

7 "THE FOREMAN: Yes, you are excused.

8 "(Witness excused.)

9 "(Time noted: 3:20 p.m.)"

10 MR. BORNSTEIN: Your Honor, the government rests.

11 THE COURT: Is the defense going to have any  
12 motions to make?

13 MR. TAIKEFF: I think so and I think it probably  
14 would be appropriate if the jury were released for the day,  
15 your Honor.

16 THE COURT: Have you decided whether the de-  
17 fense is going to put in a case?

18 MR. TAIKEFF: We are going to put on certain evi-  
19 dence, your Honor, but because of the nonavailability at the  
20 moment of the witnesses, we would have to start tomorrow  
21 morning, but we should be finished -- we can virtually assure  
22 the Court we will be finished with our presentation in the  
23 morning.

24 THE COURT: I hate to waste time and if you could  
25 go ahead with any part of your case -- is the defendant himself



1 rm/lf

2 derived from any evidence that he did give.

3 Now, once he has been given that immunity from  
4 prosecution he loses his privilege against self-incrimination.  
5 I mean his privilege not to testify, he can't refuse to  
6 testify on the grounds of self-incrimination any more. He  
7 can be required to testify but he can't be prosecuted based  
8 on the testimony he gives unless he either testifies falsely  
9 or improperly refuses to testify about some matter pertinent  
10 to the grand jury investigation.

11 Do you understand?

12 As a result of the testimony which he did give  
13 he is being prosecuted for having made false statements under  
14 oath and for having obstructed justice, allegedly, in the  
15 course of that testimony.

16 We will excuse the jury for just about five  
17 minutes while we are waiting for the next witness.

18 MR. BORNSTEIN: For the record, your Honor, the  
19 government now rests.

20 THE COURT: All right.

21 (The jury leaves the courtroom.)

22 MR. BORNSTEIN: Your Honor, I have a couple of  
23 questions here. First of all, I am just curious as to whether  
24 counsel intends to open.

25 MR. TAIKEFF: Well, we have a problem in that regard

178 a

1 rm/lf

2 and I was thinking that rather than rush something that I  
3 think is very critical in this case, we might forego the  
4 opening, and that is this: your Honor has not ruled on  
5 the question of whether or not recantation under Section  
6 1623 is a defense and I spoke to your Honor's clerk this  
7 morning indicating that somebody in my office was going to  
8 research in the course of the day and your Honor's clerk asked  
9 as soon as we had the cases found and before we wrote any-  
10 thing about it, would we call those cases into your chambers,  
11 and we will, of course, give those cases to the government  
12 so they can consider them. We can't open unless your Honor  
13 rules because it presents a problem as to what to say to the  
14 jury.

15 THE COURT: Well, I am ruling that the inconsistency  
16 in testimony between Mr. Marion's second appearance before  
17 the grand jury -- rather, his third, I should say, and his  
18 second appearance, is not a recantation within the intent  
19 of Section 1623, which requires an admission of the falsity  
20 of the original testimony, and he never admitted that this  
21 was false.

22 MR. TAIKEFF: But he changed his testimony.

23 THE COURT: He changed his testimony without ever  
24 admitting falsity. So the grand jury was not in a position  
25 to determine which one of his statements he now claims to be



1 rm/lf

2 false.

3 He was asked several times whether he wished to  
4 change anything about his original testimony and he never  
5 indicated that he wished to change anything.

6 MR. TAIKEFF: But when he was asked questions that  
7 repeated the earlier questions he gave the changed answers.

8 THE COURT: Yes. There is a case and I believe  
9 it is a Second Circuit case, and I don't have it with me,  
10 and it is the only thing my law clerk could find that is  
11 even remotely relevant, and in that case there was an  
12 affidavit filed which was inconsistent with previous testi-  
13 mony but did not specifically admit the falsity of the  
14 previous testimony and that was held not to be a recantation.

15 MR. TAIKEFF: Was it on the basis of the fact  
16 that the grand jury had already acted?

17 THE COURT: No, it was not on that basis. It  
18 was merely a statement that this inconsistency doesn't  
19 amount to a recantation. On that basis, I am ruling that  
20 as a matter of law there was no recantation in this case  
21 within the intent of Section 1623.

22 MR. TAIKEFF: May I be heard briefly on the question  
23 of whether the jury has to determine the factual question  
24 that your Honor has just determined?

25 THE COURT: That is not a factual determination,

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I will hear any further motions you have.

MR. GOODMAN: Your Honor, count 1, and I would like to direct your attention to that count in particular, requires, amongst other things, that the statement which was made had to pertain to a material aspect or it must be a false material declaration. That is set forth both in the statute as well as on the face of the indictment.

Now, his Honor will recall that -- well, the indictment indicates that at the time that the investigation was taking place, count 1, paragraph 2, the grand jury was conducting an investigation into possible violations of United States laws prohibiting conspiracy to transport a firearm in interstate commerce pursuant to Sections 371 and 922 and other federal statutes.

Paragraph 3 goes on to say that it was material to the investigation described in paragraph 2 that the grand jury ascertain, (a), whether the defendant Isadore Marion was involved in arranging with one Jack Denaro a transaction involving the transportation of an unregistered firearm from Syracuse, New York, to Las Vegas, Nevada; (b), the nature of this transaction, including the identities of other persons involved and, (c), whether the unregistered firearm was to be used in the commission of any criminal act.

I think the record clearly reflects at this point

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that Mr. Marion testified on all occasions he was arranging with one Jack Denero the transportation through Mr. Quatrone of this unregistered thing or firearm from Syracuse to Las Vegas. I think that is unrefuted. I think the record is complete as far as that aspect of the investigation was concerned and the candor of Mr. Marion and the consistency of his answers being consistent both on December 20th as well as January 8th.

(B), the nature of this transaction, including the identification of other persons involved: clearly, Mr. Marion answered every question truthfully and consistently in both proceedings, that an arrangement was made for Mr. Quatrone to bring the gun to Las Vegas and Mr. Marion testified to this, how he met Mr. Denero, Mr. Quatrone, who he was, and the date and circumstances under which the gun was to be transported. It is those two elements or those two material factors which form the predicate for 18 U.S.C. 922 which concerns itself with the transportation of unregistered firearms in interstate commerce. It would be to those two aspects that any inquiry concerning violations of 731 as it pertains to 922 would be involved.

However, the one area which causes us concern is paragraph (c) which states that the investigation concerned itself with whether the unregistered firearm was to be used

1 rm/lf

2 in the commission of any criminal act.

3 Now, the questions which were directed to Mr.  
4 Marion which caused his problems as far as the inconsistent  
5 statements all go to that point, "Why did you want the  
6 gun?

7 "A I am kidding, half in jest, half serious,  
8 I wanted it for my own personal use," et cetera.

9 On January 8, 1974, he indicates that he was  
10 going to sell it to whoever came along. Our point is that  
11 that particular part of the inquiry is not a material  
12 aspect which would form the predicate for a false  
13 material declaration as the grand jury investigation was  
14 concerning itself with Sections 371 and 922 and other federal  
15 statutes. Basically, what it concerned itself with was  
16 a fishing expedition into what Mr. Marion wanted the gun  
17 for, but it was not material to the investigation pursuant  
18 to 371 and 922, and on that basis, your Honor, we would  
19 submit that count 1 and the prosecution under count 1  
20 directed itself to an area of other than a material declara-  
21 tion and ask for a judgment of acquittal.

22 THE COURT: But for a declaration to be material  
23 it doesn't have to be a necessary element of a crime under  
24 investigation, it only has to be material.

25 MR. GOODMAN: It has to be material to the investiga-

1832



1 rm/lf  
2 tion of the grand jury.

3 THE COURT: Well, isn't a question relating to  
4 Mr. Marion's reason for importing an unregistered firearm  
5 material to an investigation into the illegal interstate  
6 transportation of firearms?

7 MR. GOODMAN: No, your Honor. The way we read the  
8 statute, your Honor, and the Court will note the language of  
9 count 1 of the indictment -- the way we read the statute  
10 is that it does concern itself with the transportation of  
11 the firearm in interstate commerce and 922 has an awful lot  
12 of requirements in it, it is the longest statute I have  
13 ever read, and has nothing at all to do with the purpose.

14 THE COURT: The purpose is not a necessary element  
15 of the crime defined in 922. You can be importing an  
16 unregistered firearm for perfectly innocent target shooting  
17 in your own basement, but it is still illegal.

18 But that is not the question. The question is  
19 whether or not his purpose is material to the investigation,  
20 not whether it is a necessary element of the crime under  
21 investigation.

22 MR. GOODMAN: But the investigation limits itself --  
23 I am sorry, the indictment limits itself to the investigation  
24 into possible violations of United States laws prohibiting  
25 conspiracy to transport a firearm in interstate commerce,

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2 It is determinative because my decision is based upon the  
3 absence of a recantation, not his reason for giving the  
4 later inconsistent testimony.

5 MR. TAIKEFF: I would assume that if he testified  
6 as I outlined and assuming your Honor believed his testimony  
7 that your Honor would still make his ruling on the basis of  
8 an absence of an affirmative recantation.

9 THE COURT: That would be my feeling.

10 MR. TAIKEFF: I understand, sir.

11 THE COURT: That there is no recantation here as  
12 a matter of law and I don't know any other way to get a  
13 definitive declaration from the Court of Appeals on the  
14 matter except for me to rule that. If they disagree, then  
15 the law will be clear.

16 MR. TAIKEFF: I understand that, your Honor.  
17 Thank you for allowing me this time.

18 THE COURT: If they agree, the law will also be  
19 clear, too. However, if I ruled the other way I am not  
20 at all sure that the government would be able to raise the  
21 matter on appeal.

22 MR. TAIKEFF: Thank you for the Court's time.

23 THE COURT: Let me say that I had given you some  
24 additional time to look over the logs in connection with  
25 your minimization motion. Are you prepared to go ahead on

185 a



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2 With respect to the defendant's proposed charges,  
3 I am not going to say that if they find that the grand jury  
4 prosecutor, Mr. Aronwald, was guilty of harrassment, decep-  
5 tion or overbearing, they have to find the defendant not  
6 guilty. I am going to say that the jury may find that  
7 because of harrassment, deception or overbearing on the  
8 part of the prosecutor the jury may find the defendant was  
9 not conscious of what he was saying or forgot the true  
10 state of facts and if it so finds may find he did not knowingly  
11 make a false statement and if they find he did not knowingly  
12 make a false statement they will have to find him not guilty  
13 under 1623.

14 I am not going to give the proposed charge relating  
15 to the requirement of a warning by the prosecutor. I think  
16 that the citation to Devitt and Blackman and to United  
17 States against Lardiari is misplaced. In that case the  
18 prosecutor had warned the witness of the penalty for perjury  
19 and the Court said that in that situation he should balance  
20 the warning by informing the witness of recantation.

21 Incidentally, in United States against DeMichel,  
22 375 Federal 2nd 955, a Third Circuit decision of 1967, the  
23 Court says that there is no duty on the prosecutor to warn  
24 the witness of his right of recantation.

25 MR. BORNSTEIN: I believe the circuit here has

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realize the falsity of what he was saying and then obviously he couldn't make the statement knowingly.

MR. BORNSTEIN: All right, your Honor, fine.

THE COURT: By naming Mr. Aronwald in the charge I had not intended to expose him to any further embarrassment or to suggest to the jury that there was any validity to the defense, but I don't believe that naming him has that effect unless his name has become synonymous with harrassment, deception or overbearing.

MR. BORNSTEIN: Hardly, your Honor.

MR. TAIKEFF: Your Honor, I have just gone through Exhibit 8-C and, of course, it is not the complete transcript of the appearance on January 8th. I have no reason to believe that anything appears in the excerpt or missing parts, so I must report to your Honor there is nothing in the transcript of January 8th that constitutes a warning about the potential prosecution for perjury.

MR. BORNSTEIN: For the record, your Honor, I have a full transcript and I was going through it earlier and I found no reference either.

THE COURT: I am going to rule that as a matter of law the prosecutor was not required to advise Mr. Marion of his right of recantation, under the U.S. against DeMichel case and the Second Circuit case that Mr. Bornstein cited.

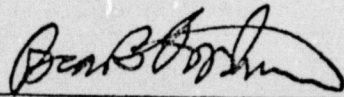
187 a





CERTIFICATE OF SERVICE BY MAILING

The undersigned hereby certifies that two (2) true and correct copies of the above and foregoing OPENING BRIEF OF APPELLANT, together with one true and correct copy of the APPENDIX thereto, was, on this 19th day of January, 1976, mailed, postage prepaid, to CARL M. BORNSTEIN, Special Attorney, United States Department of Justice, Organized Crime & Racketeering Section, One St. Andrew's Plaza, New York, New York 10007.

  
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OSCAR B. GOODMAN, ESQ.





